

1 STATE OF SOUTH CAROLINA )

2 COUNTY OF RICHLAND )

3 \* \* \* \* \*

4 JUDICIAL MERIT SELECTION COMMISSION

5 TRANSCRIPT OF PUBLIC HEARINGS

6 \* \* \* \* \*

7 BEFORE: REPRESENTATIVE ALAN D. CLEMMONS, CHAIRMAN

8 ERIN CRAWFORD, CHIEF COUNSEL

9 SENATOR LARRY A. MARTIN

10 REPRESENTATIVE BRUCE W. BANNISTER

11 MS. KRISTIAN BELL

12 MR. ROBERT M. WILCOX

13 SENATOR GERALD MALLOY

14 REPRESENTATIVE DAVID J. MACK, III

15 MR. MICHAEL HITCHCOCK

16 MS. SUSAN T. WALL

17 \* \* \* \* \*

18 DATE: November 18th, 2015

19 TIME: 10:30 A.M.

20 LOCATION: Blatt Building, Room 516

21 1101 Pendleton Street

22 Columbia, South Carolina 29201

23

24

25 REPORTED BY: LISA F. HUFFMAN, COURT REPORTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX

PAGE

THE HONORABLE JOHN LAWRENCE DUFFY, III

Examination by Ms. Wells . . . . . 10  
Examination by Dean Wilcox . . . . . 21  
Examination by Senator Malloy . . . . . 24  
Examination by Senator Martin . . . . . 28

SPIROS STAVROS FERDERIGOS

Examination by Mr. Maldonado . . . . . 36  
Examination by Senator Campsen . . . . . 48  
Examination by Senator Malloy . . . . . 53  
Examination by Dean Wilcox . . . . . 62  
Examination by Vice-Chairman Martin . . . . . 67

MICHELE PATRAO FORSYTHE

Examination by Mr. Gentry . . . . . 75  
Examination by Ms. Wall . . . . . 85  
Examination by Senator Malloy . . . . . 87  
Examination by Dean Wilcox . . . . . 91  
Examination by Senator Martin . . . . . 96  
Examination by Chairman Clemmons . . . . . 98  
Examination by Senator Campsen . . . . . 100

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX (CONTINUED)

PAGE

SEAN F. KEEFER

|   |     |
|---|-----|
| Examination by Mr. Davidson . . . . .   | 106 |
| Examination by Dean Wilcox . . . . .    | 116 |
| Examination by Senator Martin . . . . . | 121 |
| Examination by Senator Malloy . . . . . | 122 |

RITA J. ROACHE

|   |     |
|---|-----|
| Examination by Mr. Goldin . . . . .               | 130 |
| Examination by Representative Bannister . . . . . | 141 |
| Examination by Senator Martin . . . . .           | 142 |
| Examination by Representative Mack . . . . .      | 143 |
| Examination by Senator Malloy . . . . .           | 145 |

THE HONORABLE JOHN M. RUCKER

|                                       |     |
|---------------------------------------|-----|
| Examination by Ms. Anderson . . . . . | 160 |
|---------------------------------------|-----|

STEVEN COLEMAN KIRVEN

|                                      |     |
|--------------------------------------|-----|
| Examination by Ms. Benson . . . . .  | 178 |
| Examination by Dean Wilcox . . . . . | 190 |

\* \* \* \* \*

REQUESTED INFORMATION INDEX

(No Information Requested.)

\* \* \* \* \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT INDEX

PAGE

EXHIBIT NO. 1 . . . . . 10  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for The Honorable John Lawrence Duffy,  
III, dated August 9th, 2015.

EXHIBIT NO. 2 . . . . . 10  
- Amended Judicial Merit Selection Commission Personal  
Data Questionnaire for The Honorable John Lawrence  
Duffy, III, dated November 10th, 2015.

EXHIBIT NO. 3 . . . . . 11  
- Judicial Merit Selection Commission Sworn Statement  
for The Honorable John Lawrence Duffy, III, dated  
August 10th, 2015.

EXHIBIT NO. 4 . . . . . 33  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for Spiros Stavros Ferderigos, dated  
August 5th, 2015.

EXHIBIT NO. 5 . . . . . 37  
- Judicial Merit Selection Commission Sworn Statement  
for Spiros Stavros Ferderigos, dated August 5, 2015.

EXHIBIT NO. 6 . . . . . 72  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for Michele Patrao Forsythe, dated  
August 4th, 2015.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT INDEX (CONTINUED)

PAGE

EXHIBIT NO. 7 . . . . . 73  
- Amended Judicial Merit Selection Commission Personal  
Data Questionnaire for Michele Patrao Forsythe, dated  
November 10th, 2015.

EXHIBIT NO. 8 . . . . . 76  
- Judicial Merit Selection Commission Sworn Statement  
for Michele Patrao Forsythe, dated August 4th, 2015.

EXHIBIT NO. 9 . . . . . 104  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for Sean F. Keefer, dated August 6th,  
2015.

EXHIBIT NO. 10 . . . . . 106  
- Judicial Merit Selection Commission Sworn Statement  
for Sean F. Keefer, dated August 6th, 2015.

EXHIBIT NO. 11 . . . . . 129  
- Judicial Merit Selection Commission Personal Data  
Questionnaire for Rita J. Roache, dated August 9th,  
2015.

EXHIBIT NO. 12 . . . . . 133  
- Judicial Merit Selection Commission Sworn Statement  
for Rita J. Roache, dated August 10th, 2015.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT INDEX (CONTINUED)

PAGE

EXHIBIT NO. 13 . . . . . 158  
 - Judicial Merit Selection Commission Personal Data  
 Questionnaire for The Honorable John M. Rucker, dated  
 July 31st, 2015.

EXHIBIT NO. 14 . . . . . 160  
 - Judicial Merit Selection Commission Sworn Statement  
 for The Honorable John M. Rucker, dated July 31,  
 2015.

EXHIBIT NO. 15 . . . . . 177  
 - Judicial Merit Selection Commission Personal Data  
 Questionnaire for Steven Coleman Kirven, dated  
 August 4th, 2015.

EXHIBIT NO. 16 . . . . . 179  
 - Judicial Merit Selection Commission Sworn Statement  
 for Steven Coleman Kirven, dated August 4th, 2015.

\* \* \* \* \*

Court Reporter's Legend:

- dashes [--] Intentional or purposeful interruption
- [ph] Denotes phonetically written
- [sic] Written as said

1 P R O C E E D I N G S

2 CHAIRMAN CLEMMONS: Ladies and Gentlemen  
3 we are reconvening the Judicial Merit  
4 Selection Commission. The staff has several  
5 legal matters to take up with us in executive  
6 session. May I have a motion to go into  
7 executive session.

8 SENATOR MARTIN: So moved.

9 CHAIRMAN CLEMMONS: We have a motion to  
10 go into executive session and it is so  
11 ordered. Please lower the veil and close the  
12 doors. If there are any non-staff or non-  
13 members we now ask that they exit the room  
14 during executive session. Non-members of the  
15 Commission, excuse me.

16 (Off-the-record executive session.)

17 CHAIRMAN CLEMMONS: So we are back on the  
18 record using our courtroom voice. Judge  
19 Duffy, it's good to have you with us today.

20 JUDGE DUFFY: Thank you. It's good to be  
21 here.

22 CHAIRMAN CLEMMONS: Thank you. Can you  
23 please raise your right hand and be sworn?

24 (The judge is sworn in.)

25 CHAIRMAN CLEMMONS: Judge Duffy is with

1 us today seeking appointment or, excuse me,  
2 seeking election to Family Court, Ninth  
3 Judicial Circuit, Seat Three. Judge Duffy,  
4 the Judicial Merit Selection Commission has  
5 thoroughly investigated your qualifications  
6 for the bench. Our inquiry is focused on the  
7 nine evaluative criteria required by law and  
8 has also included a ballot box survey, a  
9 thorough study of your application materials,  
10 verification of your compliance with state  
11 ethics laws, a search of newspaper articles in  
12 which your name appears, study of previous  
13 screenings, and a check for economic conflicts  
14 of interest. We've received no affidavits in  
15 opposition to your election and there's no one  
16 present to testify today. You can have a  
17 brief opening statement if you'd like to share  
18 with the Commission.

19 JUDGE DUFFY: I do. I thank y'all for  
20 y'all's time and I appreciate the  
21 opportunity to speak to you. I know how  
22 important these elections are. Going through  
23 it last year, I know the decisions cannot be  
24 easy and the candidates all being so  
25 qualified, a decision not a simple one. I

1 would really appreciate an opportunity to be  
2 heard today and I hope I'm able to answer your  
3 questions, should you have them, as fully as  
4 you would like and I hope to make it through  
5 screening in order to seek election for this  
6 seat because I do believe I would be a very  
7 good candidate for it.

8 CHAIRMAN CLEMMONS: Thank you very much,  
9 Judge Duffy. Of course, you are familiar with  
10 Ms. Wells. Katherine Wells is your screening  
11 attorney. I would ask that you direct your  
12 attention to her and respond to her questions.

13 JUDGE DUFFY: Yes, sir.

14 CHAIRMAN CLEMMONS: Thank you. I'm  
15 sorry. I neglected to ask you about your  
16 personal data questionnaire. Have you  
17 reviewed your personal data questionnaire,  
18 Judge?

19 JUDGE DUFFY: I have.

20 CHAIRMAN CLEMMONS: Is it correct?

21 JUDGE DUFFY: I had amendments to it and  
22 I would ask that those be made part of the  
23 record.

24 CHAIRMAN CLEMMONS: Those amendments have  
25 been provided to staff and they are included

1 as an amendment -- as an amendment to your  
2 personal data questionnaire.

3 JUDGE DUFFY: Thank you.

4 CHAIRMAN CLEMMONS: As amended, would you  
5 have any objection to your personal data  
6 questionnaire being included in the screen --  
7 your sworn -- the record of your sworn  
8 testimony?

9 JUDGE DUFFY: None whatsoever.

10 CHAIRMAN CLEMMONS: Thank you. Were  
11 there any objections?

12 (No response.)

13 CHAIRMAN CLEMMONS: Hearing none, so  
14 ordered.

15 [EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION  
16 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR THE  
17 HONORABLE JOHN DUFFY, III, DATED AUGUST  
18 10TH, 2015, ADMITTED.]

19 [EXHIBIT NO. 2 - AMENDED JUDICIAL MERIT  
20 SELECTION COMMISSION PERSONAL DATA  
21 QUESTIONNAIRE FOR THE HONORABLE JOHN DUFFY,  
22 III, DATED NOVEMBER 10TH, 2015, ADMITTED.]

23 MS. WELLS: Thank you, Mr. Chairman.

24 EXAMINATION

25 (By Ms. Wells)

1     **Q.     Judge Duffy, you have been given also a copy of**  
2     **your sworn statement and it has detailed answers to**  
3     **over 30 questions regarding judicial contact,**  
4     **statutory qualifications, office administration and**  
5     **temperament. Do you have any additional amendments**  
6     **at this time to your sworn statement?**

7     A.    No, ma'am. I do not.

8                   MS. WELLS: At this time, Mr. Chairman, I  
9                   would ask that Judge Duffy's sworn statement  
10                   be entered as an exhibit into the hearing  
11                   record.

12                   CHAIRMAN CLEMMONS: Is there any  
13                   objection?

14                   (No response.)

15                   CHAIRMAN CLEMMONS: Hearing none, so  
16                   ordered.

17                   [EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION  
18                   COMMISSION SWORN STATEMENT FOR THE HONORABLE  
19                   JOHN DUFFY, III, DATED AUGUST 10, 2015,  
20                   ADMITTED.]

21                   MS. WELLS: Thank you, Mr. Chairman.

22     **Q.     Judge Duffy, please state for the record the city**  
23     **and circuit in which you reside.**

24     A.    I reside in North Charleston, South Carolina in the  
25     Ninth Judicial Circuit.

1 MS. WELLS: And based on the records and  
2 the testimony contained in the candidates  
3 amended PDQ, which has been included in the  
4 record with the candidate's consent, Judge  
5 Duffy meets the statutory requirements for  
6 this position regarding age, residence, and  
7 years of practice.

8 **Q. Judge Duffy, would you please explain to the**  
9 **Commission why you want to serve as a Family Court**  
10 **judge at this time and how you feel your legal and**  
11 **professional experience thus far would assist you**  
12 **to be an effective Family Court judge?**

13 A. Well, I truly believe that in our court system, the  
14 Family Court is one of the most, if not the most,  
15 important courts that we have as a society.  
16 Nothing can be more important than that court that  
17 affects families and children. I'd love the  
18 opportunity to have an impact where I think it  
19 matters the most. I think my legal experience with  
20 my practice, with the various cases I've done, with  
21 the amount of cases I've handled in Family Court, I  
22 think make me qualified to serve as a judge in  
23 Family Court.

24 **Q. Are there any areas, including subjective areas of**  
25 **law that you feel you would need to prepare for in**

1           **order to serve as a Family Court judge?**

2           A.    I can't think of any areas where I would need to  
3           prepare greater than I already have practiced in.  
4           The difference from my last time being here is the  
5           number of adoptions I had participated in, the  
6           number of termination of paternal rights I've  
7           participated in were not as great.  Since the last  
8           hearing, my practice has evolved to include a  
9           greater number of those.  One area that I have not  
10          handled in quite a while are Department of Juvenile  
11          Justice matters that deal with juvenile's criminal  
12          backgrounds, but I think part of my experience as a  
13          Municipal Court judge handling criminal matters and  
14          my legal practice handling criminal matters would  
15          help me -- would assist me in handling those  
16          matters in the Family Court.

17          **Q.  Thank you.  Do you have any suggestions that you**  
18          **could offer for improving the back log of cases**  
19          **that exist in the Family Court at this time?**

20          A.    I think it would not be a bad idea to have -- to  
21          improve the backlog would be to possibly allow  
22          maybe the ADR rules and the arbitration rules to  
23          allow for some matters to be arbitrated as opposed  
24          to having to be filed in court, such as custody  
25          issues, such as child support issues, those matters

1 that require a judge to rule on. I think that you  
2 find people in court so often, for lack of a better  
3 term, nitpicking, where it would be easier to have  
4 an arbitrator appointed by consent or by court  
5 order, much like a mediator is appointed by  
6 consent or court order to adjudicate those matters.

7 **Q. Thank you. And you addressed this in your sworn**  
8 **statement, but would you please explain to the**  
9 **members of the Commission what you think is the**  
10 **appropriate demeanor of a Family Court judge?**

11 A. I think a Family Court judge has to be someone who  
12 is decisive, has a fair temperament, is someone who  
13 is easy to hear the parties, but quick to make a  
14 decision. I think a Family Court judge has to be  
15 ready to make those hard decisions. As you deal  
16 with children, as you deal with families it  
17 sometimes -- in a Family Court case, there is no  
18 winner. There's nothing but losers, but there  
19 needs to be assurance that Family Court is a court  
20 of finality and permanency, especially for the  
21 children.

22 **Q. Thank you. Judge Duffy, the Commission received**  
23 **159 ballot box surveys regarding you with 22**  
24 **additional comments. The ballot box surveys**  
25 **contained positive comments noting that you were**

1 intelligent, fair, and have good judicial  
2 temperament in your position as a part-time  
3 Municipal Judge for the City of North Charleston.  
4 However, several of the written comments did  
5 express concerns. Several comments expressed  
6 concerns about your experience in Family Court,  
7 describing it as recent and that there were several  
8 subject areas in which you had little or no  
9 experience. You addressed this a little bit in  
10 your earlier response, but what response would you  
11 offer, exactly, to these concerns?

12 A. When I first started practicing law, I had been in  
13 the Family Court accepting guardian ad litem and  
14 Rule 608 appointments. I've been on the second  
15 floor of the Charleston County Courthouse since I  
16 was first practicing law and I've been there ever  
17 since. I certainly think the focus of my practice  
18 has shifted to Family Court in the last number of  
19 years, but I think my presence has always been  
20 there. And I do have experience, if the Committee  
21 will note, that my Department of Juvenile  
22 Justice cases are longstanding. Some of my most  
23 recent -- my first cases in Family Court was as a  
24 guardian ad litem. The focus of my practice has  
25 taken on a Family Court shape, but I would not

1 classify my experience as lacking nor would I  
2 consider my presence there recent.

3 **Q. Thank you. Other comments, in conjunction with**  
4 **this, also mention that they thought you might be**  
5 **using the position as Family Court judge as a**  
6 **stepping stone to become a Circuit Court judge.**  
7 **Some of the positive comments suggested that you**  
8 **would be better suited to be a Circuit Court judge**  
9 **instead of a Family Court judge and how do you**  
10 **respond to those?**

11 A. Well, I'm honored that some of my colleagues think  
12 I would be a fine Circuit Court judge, but I'd like  
13 the Committee to note in this election and the last  
14 election, there have been Circuit Courts seats  
15 available. I've not applied for them. At this  
16 time, I do not intend to seek it. I want to serve  
17 in the Family Court. My intention is to serve in  
18 the Family Court and to not use it as a stepping  
19 stone. If I wanted to apply for Circuit Court, I  
20 would've done so and I would've hopefully appeared  
21 before y'all yesterday. My intention is to serve  
22 as a Family Court judge because that's what I want  
23 to do.

24 **Q. And there were some comments that expressed**  
25 **concerns with having another Family Court judge in**

1           **the Ninth Circuit who has a family member who**  
2           **practices exclusively in Family Court in that**  
3           **circuit. What response would you offer to those**  
4           **comments?**

5       A.   Well, I don't think that's a unique situation in  
6           our society today when couples practice together,  
7           couples work together and in the same area of law.  
8           I think that's why we have the Judicial Canons and  
9           I think that is why there is recusal. I also would  
10          inform this Committee that, while my wife's  
11          practice is centered in Family Court, her practice,  
12          for the most part in many ways, is as a guardian ad  
13          litem and most recently, she has been become court  
14          certified to be a Family Court mediator. So if I  
15          were to take this position, it would become an  
16          easier transition for her to take more of a  
17          mediation practice than it would be to work as a  
18          litigant. Additionally, I would inform the  
19          Committee that in Charleston County we generally  
20          have three to four to five judges at any given  
21          time. We're not a one judge county and if I would  
22          not be available to hear any cases, there certainly  
23          would be a colleague down the hall that more than  
24          likely would.

25       **Q. Thank you. Judge Duffy, in your interview on**

1           October 12th, you were requested by staff during  
2           the interview and in follow-up emails to amend  
3           your PDQ and some other documents. However, these  
4           amendments were not received by the Commission  
5           until last week. Could you explain, please, to the  
6           Commission why it took so long for you to send  
7           those amendments to the Commission?

8        A.    Yes. Twofold. The first reason was I got so busy  
9           in my practice. The second reason was not  
10          realizing that I had lost my application in the  
11          floods that happened most recently. It was  
12          actually in the backseat of our car, which is why I  
13          had to amend my financial statement because we had  
14          a car that was paid for that we no longer have. So  
15          we had to get a new one. My application was in the  
16          back. Thinking I had those records, intending to  
17          get those records, intending to make the amendments  
18          based upon what I previously submitted, I was  
19          unable to do so and that was the reason for the  
20          tardiness and I do apologize.

21       Q.    Thank you. You also indicated on your application  
22           you're a member of the Hibernian Society.  
23           Some people may have concerns that this is a  
24           discriminatory organization. What response do you  
25           have to that?

1 A. It is true that Hibernian Society does not allow  
2 membership to females. However, I believe the  
3 Hibernian Society, throughout its history since its  
4 founding in -- first meeting in 1799 and charter in  
5 1801 has been and always been the preservation and  
6 the assistance to the Irish and the Irish  
7 immigrants and the preservation of Irish history.

8 **Q. Thank you.**

9 MS. WELLS: Just a few housekeeping  
10 issues, Mr. Chairman.

11 **Q. Judge Duffy, have you sought or received the pledge  
12 of any legislator prior to this date?**

13 A. I have not.

14 **Q. Have you sought or have you been offered a  
15 conditional pledge of support of any legislator  
16 pending the outcome of your screening?**

17 A. I have not.

18 **Q. Have you asked any third parties to contact members  
19 of the General Assembly on your behalf?**

20 A. I have not.

21 **Q. Are you aware of anyone attempting to intervene in  
22 any part of the process on your behalf?**

23 A. No, ma'am.

24 **Q. Have you contacted any members of this Commission?**

25 A. No, ma'am.

1 Q. Do you understand that you are prohibited from  
2 seeking a pledge or commitment until 48 hours after  
3 the formal release of the Commission's report?

4 A. I am.

5 Q. Have you reviewed the Commission's guidelines on  
6 pledging?

7 A. I have.

8 Q. And as a follow-up, are you aware that the  
9 penalties for violating the pledging rules are, it  
10 is a misdemeanor and upon conviction, the violator  
11 must be fined not more than \$1,000 or imprisoned  
12 not more than 90 days?

13 A. I am.

14 MS. WELLS: Members of the Commission, I  
15 would note that the Lowcountry Citizens  
16 Committee found Judge Duffy to be qualified as  
17 to constitutional qualifications, physical  
18 health, and mental stability. The committee  
19 also found him qualified as to professional  
20 and academic ability, experience, and judicial  
21 temperament. The committee found him well-  
22 qualified as to ethical fitness, character and  
23 reputation. I would note for the record that  
24 any concerns raised during the investigation  
25 regarding Judge Duffy were incorporated into

1 the questioning of him today. Mr. Chairman, I  
2 have no further questions.

3 CHAIRMAN CLEMMONS: Thank you Ms. Wells.  
4 Do any Commission members have questions of --  
5 hold those questions for just a moment. Staff  
6 just reminded me that you have a guest with  
7 you today, Mr. Duffy. Would you like to  
8 introduce your guest?

9 JUDGE DUFFY: Yes, Mr. Chairman. My  
10 wife is actually supposed to be in a three day  
11 trial, she is the guardian, and it settled  
12 mid-day Monday and she's here today in the  
13 audience and was able to accompany me.

14 CHAIRMAN CLEMMONS: And her name is?

15 JUDGE DUFFY: Abigail Duffy.

16 CHAIRMAN CLEMMONS: Welcome, Ms. Duffy.  
17 Good to have you with us.

18 MRS. DUFFY: Thank you, sir.

19 CHAIRMAN CLEMMONS: Thank you. And now,  
20 members, do you have any questions of Judge  
21 Duffy? Dean Wilcox.

22 DEAN WILCOX: I'm going to ask you a  
23 different question than I ask the Circuit  
24 Court judges, to the relief of all of my  
25 colleagues here. Thank you for being back in

1 front of us again and for offering for this  
2 seat. There are specific statutory provisions  
3 regarding the timing of hearings when children  
4 are in DSS custody and, certainly in some  
5 circuits, those hearings are not held  
6 always on the schedule as required by law.  
7 What is your experience in the Charleston  
8 courts with regard to the timeliness of the  
9 various hearings with children who are in  
10 temporary DSS custody?

11 JUDGE DUFFY: In my experience, if you're  
12 talking about probable cause hearing, my  
13 experience has been that those hearings  
14 are held, generally, fairly quickly because  
15 most of the clients that retain us come well  
16 after that hearing, as opposed to getting us  
17 before, for the fact that they haven't had  
18 time to come get us. As far as the other  
19 hearings you're talking about, perhaps the  
20 merits hearing where we may be delayed, a lot  
21 of time those are delayed by consent of the  
22 parties for the fact that discovery is  
23 voluminous, discovery is sensitive. I have a  
24 case right now where my client is Spanish  
25 speaking. I'm fluent in Spanish so it's no

1 problem with me, but the co-defendant is a  
2 Spanish speaker and requires assistance of an  
3 interpreter for that attorney.

4 DEAN WILCOX: In an abuse and neglect  
5 case, how do you as a judge, make certain that  
6 a child is not, for lack of a better phrase,  
7 lost in foster care for a long time before it  
8 gets resolved?

9 JUDGE DUFFY: I think you make your  
10 orders clear. I think you hold DSS to the  
11 time line. I think one of the problems that I  
12 see in Charleston County is not with the  
13 courts. It's with DSS getting orders in,  
14 submitting orders on time, and getting  
15 parties served. So I think it's incumbent  
16 upon judiciary to keep their notebooks, to  
17 keep their time lines, to make sure that the  
18 orders are submitted, and every thing is done  
19 in proper form and fashion.

20 DEAN WILCOX: Thank you, Mr. Chairman.

21 JUDGE DUFFY: I'm still waiting on an  
22 order from an August hearing that I have not  
23 received in a DSS case.

24 CHAIRMAN CLEMMONS: Other questions?

25 SENATOR MALLOY: Mr. Chairman.

1 CHAIRMAN CLEMMONS: Yes, Senator Malloy.

2 SENATOR MALLOY: You are fluent in  
3 Spanish?

4 JUDGE DUFFY: Yes, sir.

5 SENATOR MALLOY: And so was that your  
6 major in college? How did that come about?

7 JUDGE DUFFY: I had a double major at  
8 Furman in history and Spanish. While I was at  
9 Furman, I lived in Spain with a home study and  
10 she, in the four months I was there, said lamp  
11 and congratulations were the only two English  
12 words she ever spoke. After college, I went  
13 to Argentina to live with a friend and work.  
14 The economy in Argentina didn't do so well  
15 upon my arrival. I don't think it was because  
16 of me, but that's what happened and I couldn't  
17 find a job.

18 So I ended up spending about six months  
19 down there as a backpacker going through  
20 Argentina, Bolivia, Peru, and Chile until the  
21 money ran out and then I had to come back and  
22 get a real job. So that's where a lot of my  
23 Spanish background comes from. A lot of my  
24 clientele at this point, especially through my  
25 representation of Special Immigrant Juvenile

1 Status cases where I'm dealing with  
2 unaccompanied minors. I use it a considerable  
3 amount of time in my practice and I have no  
4 one else in my office that -- I have an  
5 associate attorney. She can work in Spanish,  
6 but only I can really speak Spanish.

7 SENATOR MALLOY: Have you been in  
8 court, called in as an interpreter, before?

9 JUDGE DUFFY: No, sir, but I do do bond  
10 hearings in Spanish while I'm the support  
11 judge and we have no interpreter.

12 SENATOR MALLOY: Okay. The mediations  
13 that we have, have you been involved with  
14 those as a practitioner?

15 JUDGE DUFFY: As a practitioner, I have -  
16 - excuse me, but I'm not a certified mediator.

17 SENATOR MALLOY: Okay. And your thought  
18 process on temporary hearings. Some judges  
19 still will not allow arguments at temporary  
20 hearings. Some will make you just have it on  
21 your affidavits. What's your thought process  
22 on that?

23 JUDGE DUFFY: I think if someone has  
24 retained counsel -- I think if someone has  
25 employed counsel, I think counsel should be

1 heard. I do also believe, under Rule 21, that  
2 if someone's unrepresented, I think the court  
3 should hear in some small or large part from  
4 the unrepresented litigant, but I don't think  
5 it should become a trial. But I do think  
6 arguments should be had based upon the  
7 pleadings as a temporary hearing is nothing  
8 more than a trial by ambush. We're not  
9 prejudiced, but in many ways, folks don't get  
10 those affidavits.

11 I have two temporary hearings tomorrow.  
12 I have no affidavits from the other side. I  
13 probably won't get them until they walk in the  
14 courtroom. I think I should be given an  
15 opportunity to respond to it.

16 SENATOR MALLOY: One of the thoughts that  
17 goes along with a hearing, obviously, do you  
18 use an alimony calculator in your practice?

19 JUDGE DUFFY: I do not. I have a  
20 Macintosh and Traxler's only works on DOS  
21 systems.

22 SENATOR MALLOY: Okay. And we actually  
23 have legislation that we continue to look at.  
24 I think we represented matters and have given  
25 it a name as it relates to alimony cases.

1           What I'm concerned about now is that, you  
2           know, the statute will say that you terminate  
3           after 90 days of continued cohabitation. I'm  
4           trying to make certain if there's a case now  
5           where someone is cohabiting for 80 days and  
6           then there's a period of time whenever they  
7           are not, you have any thought process on what  
8           happens then whenever the law requires you to  
9           have 90 days continuing, do you know what you  
10          do in that circumstance?

11           JUDGE DUFFY: Well, based upon the recent  
12          decision from the court, it almost seems  
13          impossible to get your 90 days; it seems  
14          almost impossible to prove. And it's ironic,  
15          I actually have a termination of alimony case  
16          where it's a 90 day continuous cohabitation.  
17          I believe we've got proof of it, but had this  
18          decision come out most recently and this  
19          person been aware, then I think it would've  
20          been easy for the other side to sidestep and  
21          hit the technicality that the court found.

22           SENATOR MALLOY: All right. Thank you,  
23          Mr. Chair.

24           CHAIRMAN CLEMMONS: The Chair recognizes  
25          Senator Martin.

1                   SENATOR MARTIN: Thank you. You know,  
2                   it's real interesting, you know, sometimes  
3                   you're not going to comment or ask what some  
4                   people think you might be on the verge to do.  
5                   Are you aware -- you're not aware, but we  
6                   always ask that when we're asking questions.  
7                   One of the toughest things I ever had to do as  
8                   a dad was put my oldest daughter on an  
9                   airplane to go to Argentina for foreign study  
10                  and she did that as a sophomore at Clemson.  
11                  And was down there in Cordova or Cordova -- I  
12                  can't even pronounce it right -- for six  
13                  months, but I'm impressed with your foreign  
14                  study experience.

15                  The biggest thing that concerns me about  
16                  Family Court, and I'm probably going to chime  
17                  in on a lot those candidates today in this  
18                  regard, is demeanor of a Family Court judge  
19                  with the litigants. Tell us about your  
20                  philosophy as it relates to how a Family Court  
21                  judge should purport himself day in and day  
22                  out or herself day in and day out to  
23                  litigants. And also, you know, you deal with  
24                  a lot of guardian ad litem, DSS employees.  
25                  There's one continuing theme that we run into,

1 and I've run into over the years, has been  
2 some, you know, judges are just rude or the  
3 judge was just impatient, unfair, trying to  
4 get these cases through. Tell us a little bit  
5 about your philosophy briefly, but respond to  
6 that if you would.

7 JUDGE DUFFY: I don't think anyone should  
8 be afraid to go to court for fear that the  
9 judge is going to take out their traffic jam  
10 or their spilt coffee on the litigant.  
11 Whether or not you come into court with bad  
12 facts, you come into court with a bad  
13 situation, that's a different issue and some  
14 people do need to be scolded, for lack of a  
15 better term, especially in Family Court. I  
16 don't think, however, that in any way --  
17 everyone has bad days, but I don't think bad  
18 days or bad attitudes should be transferred to  
19 any person simply because they find themselves  
20 in the crosshairs.

21 SENATOR MARTIN: Well, let me ask you  
22 this. If there's a judge out there -- you've  
23 been practicing about ten years now?

24 JUDGE DUFFY: Yes, sir.

25 SENATOR MARTIN: Is there a judge out

1           there in Family Court, Circuit Court,  
2           or Appellate Court that you would share with  
3           this Committee that you would emulate or like  
4           to be like and why?

5           JUDGE DUFFY: Jerry Vinson. I  
6           think Jerry Vinson, in my experience, has the  
7           absolute calmest, coolest, collected demeanor.  
8           He's one of the smartest judges I've ever  
9           appeared in front of and it's apparent when  
10          you make your argument to him. It's apparent  
11          when you read your affidavit. It's apparent  
12          when you read your pleadings. I think he is  
13          absolutely someone that I would try to be like  
14          and I hope all judges would be.

15          SENATOR MARTIN: Thank you.

16          JUDGE DUFFY: Yes, sir. I will say this,  
17          that Jerry Vinson is not of my circuit. So  
18          unfortunately, I don't get to practice in  
19          front of him, but every time he comes to  
20          Charleston.

21          CHAIRMAN CLEMMONS: Other questions?

22          (No response.)

23          CHAIRMAN CLEMMONS: Hearing none. Judge  
24          Duffy, thank you so much for being here with  
25          us.

1 JUDGE DUFFY: Thank y'all for hearing me.  
2 Thank you for having me.

3 CHAIRMAN CLEMMONS: Thank you for  
4 offering. Don't leave quite yet.

5 JUDGE DUFFY: Sorry.

6 CHAIRMAN CLEMMONS: We need to get a  
7 little bit more in on the record.

8 JUDGE DUFFY: Yes, sir.

9 CHAIRMAN CLEMMONS: This concludes this  
10 portion of our screening process. Judge  
11 Duffy, as you know, the record will remain  
12 open until the report is published and you may  
13 be called back at such time if that need  
14 should arise. I'll remind you of the 48-hour  
15 rule. We ask you to be mindful of that.  
16 Should anyone inquire whether or not they may  
17 advocate on your behalf, we ask that you  
18 respond to them with regard to the 48-hour  
19 rule.

20 JUDGE DUFFY: I will, indeed.

21 CHAIRMAN CLEMMONS: Thank you of  
22 offering and we thank you for your service to  
23 South Carolina.

24 JUDGE DUFFY: Thank you so much,  
25 everyone.

1 CHAIRMAN CLEMMONS: Have a good day, sir.

2 JUDGE DUFFY: Thank you.

3 (The candidate is excused.)

4 CHAIRMAN CLEMMONS: Mr. Ferderigos, good  
5 to have you with us.

6 MR. FERDERIGOS: Thank you, sir. How are  
7 you?

8 CHAIRMAN CLEMMONS: Very well, thanks.  
9 Spiros Stavros Ferderigos is seeking election  
10 to Family Court, Ninth Judicial Circuit, Seat  
11 3. Good to have you with us today, sir. I  
12 understand you might have a guest with you.

13 MR. FERDERIGOS: I do. I have my --

14 CHAIRMAN CLEMMONS: Could you introduce  
15 us?

16 MR. FERDERIGOS: Yes, sir, my lovely  
17 wife, Laura Ferderigos.

18 MRS. FERDERIGOS: Nice to meet you.

19 CHAIRMAN CLEMMONS: Great to have you  
20 with us.

21 MRS. FERDERIGOS: Thank you.

22 CHAIRMAN CLEMMONS: Thank you for joining  
23 us. Mr. Ferderigos, let's start by swearing  
24 you in. If you'd raise your right hand,  
25 please.

1 (The candidate is sworn in.)

2 CHAIRMAN CLEMMONS: Thank you very much.  
3 Mr. Ferderigos, have you had an opportunity to  
4 review your personal data questionnaire?

5 MR. FERDERIGOS: Yes, sir.

6 CHAIRMAN CLEMMONS: Is it correct and  
7 complete?

8 MR. FERDERIGOS: It is.

9 CHAIRMAN CLEMMONS: No need for any  
10 changes or amendments at this point?

11 MR. FERDERIGOS: No, sir.

12 CHAIRMAN CLEMMONS: Would you have any  
13 objection to making your personal data  
14 questionnaire a part of the record of your  
15 sworn testimony today?

16 MR. FERDERIGOS: No objection.

17 CHAIRMAN CLEMMONS: Thank you. Is there  
18 any objection by members of Commission?

19 (No response.)

20 CHAIRMAN CLEMMONS: Hearing none, so  
21 ordered.

22 [EXHIBIT NO. 4 - JUDICIAL MERIT SELECTION  
23 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR  
24 SPIROS STAVROS FERDERIGOS, DATED AUGUST 5TH,  
25 2015, ADMITTED.]

1                   CHAIRMAN CLEMMONS: Mr. Ferderigos, the  
2                   Judicial Merit Selection Commission has  
3                   thoroughly investigated your qualifications  
4                   for the bench. That inquiry has focused on  
5                   the nine statutory evaluative criteria. It  
6                   has also included a ballot box survey, a  
7                   verification of your compliance with state  
8                   ethics laws, a thorough study of the  
9                   application materials that you've provided, a  
10                  search of newspaper articles in which your  
11                  name appears, study of previous screenings,  
12                  and a check for economic conflicts of  
13                  interest.

14                 As of today, we've received no affidavits  
15                 filed in opposition to your election and  
16                 there's no one present to testify. Do you  
17                 have a brief opening statement that you'd like  
18                 to share with us?

19                 MR. FERDERIGOS: Yes, sir. That would be  
20                 great. Thank you. First of all, thank you  
21                 for having me here. It's a pleasure to see  
22                 y'all again. I was humbled to be here last  
23                 year running for a judicial position and was  
24                 fortunate enough to be screened out and go to  
25                 the General Assembly. I'm even more humbled

1 now having gone through that process to be  
2 here today, now that I know a little more of  
3 what it entails.

4 Just very briefly, I want to say that  
5 I've been practicing law for 13 years. I've  
6 devoted my entire legal career to the  
7 practice of Family Court law. That's all I've  
8 done. In private practice, we had cases with  
9 multi-million dollar estates. They would fly  
10 the kids back and forth in private jets. We  
11 have cases with nominal estates where the  
12 families couldn't come to our office on their  
13 own. We had to get a cab for them to come to  
14 our office and we were able to help all them  
15 and do all that work.

16 I left the private practice I was in to  
17 go to public service with the solicitor's  
18 office because the one thing we didn't do was  
19 juvenile delinquency. I knew if I wanted to  
20 be able to come before y'all that I would need  
21 to be a well-rounded candidate. So I've been  
22 with Scarlett Wilson in Charleston County,  
23 strictly doing juvenile delinquency from  
24 ungovernables, to disturbing school, to  
25 murders, to finding juveniles that were going

1 to be charged as adults. I have a murder case  
2 I'm working on right now with that. So I've  
3 run the gambit on the civil side. I've run  
4 the gambit on the criminal side. I did that  
5 for the sole reason for one day to hopefully  
6 be able to come up and present myself. I  
7 clerked for Family Court judges in law school  
8 and I fell in love with the Family Court  
9 system and knew that's what I wanted to do.

10 CHAIRMAN CLEMMONS: Thank you very much.  
11 We would now ask you to turn your attention to  
12 Mr. Maldonado and respond to any questions he  
13 might have.

14 MR. MALDONADO: Thank you, Mr. Chairman,  
15 members of the Commission. I have a few  
16 matters to take up with this candidate.

17 EXAMINATION

18 (By Mr. Maldonado)

19 **Q. Mr. Ferderigos, you have before you a sworn**  
20 **statement that you provided with detailed answers**  
21 **to over 30 questions regarding judicial conduct,**  
22 **statutory qualifications, office administration,**  
23 **and temperament. Are there any additional**  
24 **amendments you'd like to make at this time to your**  
25 **sworn statement?**

1 A. No, sir.

2 MR. MALDONADO: At this time, Mr.  
3 Chairman, I would ask that Mr. Ferderigos'  
4 sworn statement be entered in as an exhibit in  
5 the hearing record.

6 CHAIRMAN CLEMMONS: Thank you, Mr.  
7 Maldonado. Are there any objections?

8 (No response.)

9 CHAIRMAN CLEMMONS: Hearing none, so  
10 ordered.

11 [EXHIBIT NO. 5 - JUDICIAL MERIT SELECTION  
12 COMMISSION SWORN STATEMENT FOR SPIROS STAVROS  
13 FERDERIGOS, DATED AUGUST 5TH, 2015, ADMITTED.]

14 **Q. Mr. Ferderigos, would you please state for the**  
15 **record the city and circuit in which you reside?**

16 A. Charleston County; Charleston, South Carolina.

17 MR. MALDONADO: One final procedural  
18 matter, I note for the record that based on  
19 the testimony contained in the candidates PDQ,  
20 which has been included in the record with the  
21 candidate's consent, Mr. Ferderigos meets the  
22 statutory requirements for this position  
23 regarding age, residence, and years of  
24 practice.

25 **Q. Mr. Ferderigos, you gave me an explanation, but why**

1           **do you want to serve as a Family Court judge and**  
2           **how do you feel your legal and professional**  
3           **experience will assist you in being a family judge?**

4       A.   Thank you.   When I was in law school, I had the  
5           opportunity and privilege to clerk for the  
6           Charleston County Family Court judges and I am a  
7           firm believer in the judicial process, but  
8           especially the Family Court process.   Family Court  
9           is about building people up, whether it's on the  
10          domestic relations side, whether it's on the  
11          juvenile delinquency side.   For the domestic  
12          relations side, it's about the best interest of the  
13          child when children come through.   You have a  
14          horrible situation.   You have parents, a lot of  
15          times, who come in, they're not thinking straight.  
16          They're using children as weapons.   They're using  
17          the finances against each other and you need to  
18          have a judge who is in place who will apply the  
19          rule of law.

20                The judge will apply the rules of evidence  
21                and the rules of court.   I've been doing family law  
22                now for 13 years and all too often, those aren't  
23                always applied in Family Court.   It depends on the  
24                judge, but you do not apply those rules, there's  
25                chaos in court.   There's too much smoke screen and

1 the judge is just shooting from the hip making  
2 rulings. Every litigant has a right to have a  
3 dignified hearing and to have their court date set  
4 for them to be able to come in and put everything  
5 appropriately before the judge and for the judge to  
6 b  
e able to adequately look at everything.

7 So that's one reason I want to be a Family  
8 Court judge is because it is a place where I  
9 feel as though I can make a difference. It's a  
10 place where I can give back to the public in public  
11 service. I have no intention of going to Circuit  
12 Court, Court of Appeals, Supreme Court. Family  
13 Court is, if I'm ever blessed to make it that far  
14 -- I know this is on the record, by the way. So I  
15 hope I'm not saying anything wrong, but really and  
16 truly, that's my thing. That's what I've wanted to  
17 do and my goal is to be on the family bench and  
18 retire, you know, from there.

19 My experiences doing Family Court, I think,  
20 will serve me well if I'm fortunate to move forward  
21 because I've done the civil side and I've also done  
22 the criminal side. For the civil side, again, I've  
23 had clients where they were flying the kids back  
24 and forth to Panther's games for visitation on  
25 private jets. On the other side, I've had clients

1           who, the marital estate consisted of the marital  
2           home and the marital home was under. It was debt.  
3           They were dividing debt.

4           So I've had numerous trials, week long trials  
5           on the domestic side. I'm more than comfortable  
6           with that. I know what I'm doing on that end and I  
7           purposely left to round myself off for the juvenile  
8           delinquency side and again, I'm working right now  
9           for a Mother's Day murder that happened in  
10          Charleston involving a juvenile. I've been there  
11          eight years with Scarlett Wilson and I also run  
12          the juvenile Drug Court Program with Judge Condon  
13          and Judge Curry down in Charleston County. It's an  
14          amazing program, by the way. It's one of the best  
15          programs we've had. We literally seen juveniles  
16          addicted to drugs turn their lives around and  
17          become productive citizens. It's very nice to see.

18       **Q. Thank you. Mr. Ferderigos, were there any areas,**  
19       **including subjective areas of law, that you feel**  
20       **that you need additional preparation in order to**  
21       **serve as a judge and how will you handle that**  
22       **preparation?**

23       **A.** The one thing that we did not do much of was  
24       adoption. That is not statutorily driven. I'm  
25       comfortable with that. I know that's been a

1 question the last two years, I think, for the  
2 judicial exam. I would apply the law, plain and  
3 simple, and I would do that in every case.

4 **Q. Although you addressed this in a sworn affidavit,**  
5 **can you explain to the members of the Commission**  
6 **what you think is the appropriate demeanor for a**  
7 **judge?**

8 A. It is very important, in my belief, for the judge  
9 to be sincere, for a judge to make sure that every  
10 litigant has their chance to have their day in  
11 court. You can't have attorneys yelling on the  
12 other side, causing theatrics, throwing chairs  
13 across. I've seen some crazy things in the  
14 courtroom that the litigants' attorneys were able  
15 to get away with and that's a true story,  
16 literally a chair flung across. It is absolutely  
17 insane.

18 A judge is there and needs to have a demeanor  
19 to make sure that the rules of law are applied,  
20 that everybody has a right to speak, that everybody  
21 has a right to have their day in court. Being  
22 jovial from the bench, I don't think that's  
23 appropriate when you have litigants in front of  
24 you. Now, of course, we all practice law together.  
25 The judges have practiced law with attorneys that

1 go through. There's a time to be jovial, but in  
2 front of a client, that is not the appropriate  
3 place to do that.

4 So I think the judge needs to be candid.  
5 They need to be knowledgeable of the law and make  
6 sure to apply the law and make sure everybody has  
7 their fair day in court. And to do that, you have  
8 to make sure to stick to the rules and that's the  
9 demeanor I would have as a judge. I would be  
10 forthright. I'd be serious. I'd be kind. I'd be  
11 respectful to everybody that comes in the  
12 courtroom. That is their day in court and that is  
13 their everything for that moment. They have a  
14 right to be heard and make sure that they're moved  
15 forward accordingly.

16 **Q. Thank you. What suggestions would you offer to**  
17 **improve the backlog of the cases in Family Court.**

18 A. Hard work, really and truly. I apply private work  
19 ethic to my public service. Usually -- I don't  
20 want to say every single time. There have been  
21 one or two times it hasn't happened over eight  
22 years, but usually, my desk is clean. I work.  
23 I'll work late if I have to work late. I get the  
24 job done.

25 If you just sit around and just, you know, do

1 the office cooler, walk around, then that's not  
2 appropriate. A lot of times, what I've seen with  
3 some courts is if a judge has a way to kind of kick  
4 the can down the road, that'll happen. I don't  
5 think that's appropriate. I think that is the day  
6 you're in court. That is the day that you rule on,  
7 unless there's a reason for you not to given it  
8 that day. Pushing things down so it gets closer to  
9 trial then resolving it at that point is not  
10 appropriate. It does a disservice to our Bar. It  
11 does a disservice to judiciary and it makes people  
12 very upset because they have that right to be in  
13 court that day and have, at least, a resolution of  
14 the issues that are before the judge.

15 **Q. Mr. Ferderigos, the Commission received 118 ballot**  
16 **box surveys regarding you and 20 additional**  
17 **comments. The ballot box survey, for example,**  
18 **contained the following positive comments. He**  
19 **would make a great addition to the bench. He's**  
20 **intelligent, smart, kind, and very well versed in**  
21 **the law and would make an excellent judge, smart**  
22 **and compassionate. Also, his experience as a**  
23 **juvenile prosecutor in Family Court will serve him**  
24 **well on the bench. Six of the comments expressed**  
25 **concerns. Several comments indicated that you**

1           **lacked the experience to fill the seat. What**  
2           **response would you offer to those concerns?**

3           A.    I would imagine those six responses were people who  
4           did not have domestic relations cases with me.  
5           They may have had criminal law cases with me. I've  
6           done both on both ends. I know some attorneys that  
7           know me as a criminal attorney. Other attorneys  
8           know me as a domestic attorney. I still get calls  
9           about alimony cases, to help evaluate cases. I  
10          still get those to this day from other colleagues  
11          who are in the business and it's very humbling to  
12          have that and to get that.

13                 But I can stand before this committee and say  
14                 that I have experience on both sides, vast  
15                 experience, and the good thing is when I was in  
16                 domestic relations, the law firm I was with -- it  
17                 was Paul Tinkler. It was one of those here's your  
18                 case. Take it and run with it. It was my case  
19                 from then on.

20                 One of the last cases I had was with Judge  
21                 Danny Martin and we had a three day trial for a  
22                 very large case. We were together and it  
23                 went well, but I have experience on both of those.  
24                 My response would be -- little long-winded, I  
25                 apologize. That those individuals probably don't

1 know me in my role as a domestic litigator versus a  
2 criminal attorney.

3 **Q. Another commentator expressed concerns over your**  
4 **professionalism and in a comment indicated that you**  
5 **might not act always in the best interest of the**  
6 **juveniles acting as a juvenile pipeline to prison.**  
7 **What response would you offer that comment?**

8 A. I would respond, number one, that I have three  
9 adorable children. I have an eight year old, a six  
10 year old, and a three year old that are the loves  
11 of mine and Laura's life. I would imagine that  
12 that came from the criminal prosecution area.  
13 Being a prosecutor, you get a lot of targets on  
14 your back. People get mad when kids are in jail,  
15 but that's my job. My job is to prosecute cases.  
16 I've prosecuted three murders, arm robberies, down  
17 the road a ways and across the board, whatever you  
18 have. I've had attorneys look at me and get  
19 upset when they would not take the plea offer that  
20 I offered. It goes to trial. I tell them what's  
21 going to happen in trial. That is what happens and  
22 then the juvenile is having to go to detention or  
23 placement.

24 I have one attorney yell at me and storm out  
25 the courtroom. I would imagine it's one of those

1 attorneys, but I will say that being a prosecutor  
2 puts a target on your back for certain individuals  
3 who don't believe that children should be  
4 prosecuted and that's my job. I'm a juvenile  
5 prosecutor.

6 **Q. You've been involved in two lawsuits. Both**  
7 **lawsuits were filed in 2015 arising from a dispute**  
8 **about property in Charleston, South Carolina that**  
9 **you co-own. Can you please explain the nature of**  
10 **those?**

11 A. Absolutely. This is a family dispute that is very  
12 regrettable and this is how it has come down. My  
13 father and my uncle own Old Town Restaurant, which  
14 is a building at 229 King Street in Charleston. My  
15 brother and I inherited 50 percent of it. My  
16 cousin inherited the other 50 percent of it. My  
17 cousin wanted to add an additional construction  
18 above the building to rent out for rental  
19 properties.

20 Myself and my brother had cash to move forward  
21 with the project. We were looking into it,  
22 considering, you know, step by step, seeing if we  
23 wanted to do, see if we want to do, see if we want  
24 to do it, getting closer and closer and closer. As  
25 we get closer, low and behold, my cousin did not

1 have the financing to put up his end of the  
2 proposed project. So he demanded that my brother  
3 and I basically co-sign his loan, give our  
4 financial interest for him to get a mortgage, for  
5 us to co-sign and underwrite his mortgage.

6 We weren't willing to do that. He got mad.  
7 He sued us, simple as that. There's a defamation  
8 case in there where he says my -- let's see how it  
9 all goes down. He says my dad told something  
10 to his mom and his mom told him. We just got a  
11 letter from his mother saying she never told that  
12 to him. This is all about him trying to get  
13 leverage on stuff. It's insane. I'm 37 years old.  
14 I've lived a good, wholesome life. Nothing like  
15 this has ever happened before to me in my life.  
16 It's a family dispute where my cousin is trying to  
17 get me and my brother to basically underwrite his  
18 loan so he can build a building, which we're not  
19 comfortable doing. I mean, you know, my money's  
20 there for my children. That's what it's there for,  
21 not to underwrite his loan.

22 So what I can say is that, as an officer of  
23 the court, I can say that it's frivolous in nature.  
24 I do not believe it will go far. Every  
25 communication has been in writing. I went out of

1 my way to attach the written communications in the  
2 pleadings because I knew y'all would be looking  
3 into it so you can see that it is a frivolous  
4 nature and it's a family dispute that,  
5 unfortunately, you know, we all have someone like  
6 that in our family. It's sad. It's very  
7 disheartening.

8 (Chairman Clemmons exits the conference room.)

9 VICE-CHAIRMAN MARTIN: Senator from  
10 Charleston.

11 SENATOR CAMPSEN: What would be the  
12 possible -- I'm trying to envision a cause of  
13 action that he could articulate whereby you  
14 have an obligation to be a cosigner because  
15 they would know he signed. I'd just like to  
16 know what is that? What is his plan?

17 MR. FERDERIGOS: Well, we've been trying  
18 to figure out his plan for a while now and  
19 it's a little confusing. That's one of those  
20 things where I think when you have unusual --

21 SENATOR CAMPSEN: Not the plan, but in  
22 the pleading, what cause of action does he  
23 plead?

24 MR. FERDERIGOS: Specific performance.  
25 He wants us to build. He wants us to build

1 and the only way to build is for us to  
2 mortgage 229 Kings Street and our personal  
3 finances for him to get a loan. He can't get  
4 a loan is apparently the issue.

5 SENATOR CAMPSEN: So he's alleging a  
6 prior agreement that you --

7 MR. FERDERIGOS: Never had.

8 SENATOR CAMPSEN: -- have not fulfilled  
9 and you must specifically perform?

10 MR. FERDERIGOS: And specifically, again,  
11 I put the written communications in a  
12 pleading. You will see a December 12th email  
13 from me to him saying I will not accumulate  
14 debt. It's detrimental to my family. I don't  
15 want a \$2 million loan for somebody else. I'm  
16 not going to do that. There's an email from  
17 me saying that. And then there's also emails  
18 that show that he did not even know what the  
19 terms of his proposed loans were, much less us  
20 because we weren't involved in it, way after  
21 he alleged there was an agreement. I mean,  
22 the best way that I can reflect to that is  
23 looking at his other case that he filed  
24 simultaneously, which in my belief is trying  
25 to get an upper hand on the other case. He

1 says that I told my dad something. My dad  
2 told his mom something. His mom told somebody  
3 else. There's like four levels of hearsay in  
4 there and his mother just gave a written  
5 statement saying that never happened as a  
6 mother. His own mother.

7 So this is a lawsuit where he's trying to  
8 get us to underwrite his loan so that he can  
9 build a project that he thinks is worthwhile  
10 and I don't believe it's worthwhile with me  
11 going into a loan with him. It's something I  
12 never agreed to do. So that's the specific  
13 performance to get us to build it. And also  
14 if the judge does not specifically perform it  
15 to get us to pay the money, you know,  
16 expenses.

17 VICE-CHAIRMAN MARTIN: I appreciate the  
18 senator from Charleston asking that question.  
19 If you were running for the Circuit Court, I'd  
20 ask for your opinion on frivolous lawsuits.

21 MR. FERDERIGOS: Well, I studied that  
22 recently because of this so I could properly  
23 give you an answer.

24 VICE-CHAIRMAN MARTIN: We're going to  
25 save that for the circuit races this

1           afternoon. We're going to talk a little bit  
2           more about that. Counsel?

3                   MR. MALDONADO: Thank you. We'll finish  
4           up with some housekeeping issues.

5   **Q. Mr. Ferderigos, have you sought or received any**  
6   **pledge of any legislators prior to this date?**

7   A. I have not.

8   **Q. Have you sought or been offered a conditional**  
9   **pledge of support of any legislator pending**  
10   **the outcome of this screening?**

11   A. I have not.

12   **Q. Have you asked any third parties to contact**  
13   **members of the General Assembly on your behalf?**

14   A. I have not.

15   **Q. Are you aware of anyone attempting to intervene in**  
16   **any part of the process on your behalf?**

17   A. I didn't catch the last part. I'm sorry?

18   **Q. Are you aware of anyone attempting to intervene in**  
19   **any part of the process on your behalf?**

20   A. I am not -- I have not.

21   **Q. Have you contacted any members of the Commission?**

22   A. I have not.

23   **Q. Do you understand that you are prohibited from**  
24   **seeking a pledge for commitment until 48 hours**  
25   **after the formal release of the Commission's**

1           **report?**

2       A.    I am.

3       **Q.    Have you reviewed the Commission's guidelines on**  
4       **pledging?**

5       A.    I have.

6       **Q.    As a follow-up, are you aware of the penalties for**  
7       **violating the pledging rules --**

8       A.    I am.  Sorry.

9       **Q.    No problem.  That is, it's a misdemeanor and**  
10       **upon conviction, the violator must be fined not**  
11       **more than \$1,000 or imprisoned not more than 90**  
12       **days?**

13      A.    I am aware.

14                   MR. MALDONADO:  I would note that the  
15                   Lowcountry Citizens Committee found Mr.  
16                   Ferderigos to be qualified as to the  
17                   constitutional qualifications, physical  
18                   health, and mental stability.  He was found  
19                   well qualified as to ethical fitness,  
20                   professional and economic ability, character,  
21                   reputation, experience, and judicious  
22                   temperament.  The Citizens Committee further  
23                   noted that Mr. Ferderigos has a great passion  
24                   for his work and is goal-oriented.  I would  
25                   note for the record that any concerns raised

1 during the investigation regarding the  
2 candidate today were incorporated into the  
3 questioning of the candidate today. Mr.  
4 Chairman, I have no further questions.

5 VICE-CHAIRMAN MARTIN: Thank you. Any  
6 members of the Commission have a question?  
7 Senator from Darlington.

8 SENATOR MALLOY: Thank you, Mr. Chairman.  
9 Mr. Ferderigos, we all got a chance to meet  
10 you last time and so, you know, we had some  
11 contact then and it's good to meet you, good  
12 to see that you have come back.

13 Congratulations on doing well on your  
14 test. They said it was really hard. My  
15 question, you know, I've been contemplating a  
16 lot of things with juvenile justice.  
17 Obviously, I think that one of the things that  
18 we have concerns about is that we call it the  
19 children behind the wire. We're having a lot  
20 of conferences around the country. I know  
21 that you are a prosecutor now. Just want to  
22 get your thought process on what do you think,  
23 as a Family Court judge, how would you  
24 transition from being a prosecutor into a  
25 Family Court judge to make certain that you're

1 carrying out your duties and functions?

2 I'll never forget when Judge Byars came  
3 in before our committee once. He said, you  
4 know, this bomb case is not really a  
5 disturbing the school case to get her kid out  
6 of school. And I've been advocating to some  
7 of my areas is that, you know, to get rid of  
8 the alternative school in my area because we  
9 don't need to be kicking children out of  
10 school.

11 So what my question to you is that as a  
12 prosecutor, I know you said that your duty was  
13 to prosecute the cases. I want to see that  
14 from a Family Court judge perspective. I know  
15 you'd follow the law, but how would you assess  
16 that in a Family Court aspect with your  
17 experience now and to getting some  
18 alternatives and supporting alternatives as it  
19 relates to children coming before you?

20 MR. FERDERIGOS: That's a great  
21 question because I can tell you one of the  
22 things that I've been thinking about. I  
23 said before, I am a member of the Juvenile  
24 Drug Court program in Charleston County. It  
25 is an amazing program. One of the pitfalls --

1 many pitfalls in juvenile delinquency -- one  
2 of them is you have DJJ, who's so overworked,  
3 it's hard to look over the children that are  
4 involved and it causes kind of a snowball  
5 effect.

6 In Juvenile Drug Court, that doesn't  
7 happen. You're in front of a judge every  
8 single week. You have a school representative  
9 You have a DJJ representative. You have a  
10 public defender. You have a solicitor. I  
11 would love to implement something along those  
12 lines, but it'd be a school based program. I  
13 don't know what it would be called, but the  
14 same thing because the first place that we see  
15 these issues coming up are in the school and  
16 discipline referrals. I get some kids that  
17 come in that have 50 discipline referrals  
18 while on probation before they come into  
19 school and attend school order. But if you  
20 have like Drug Court, and I think Drug Court  
21 has to be the key, because it works so well  
22 where juveniles can come before the court.  
23 They're looked after every single week and you  
24 have a school representative. And with my  
25 eight, six, and even three year old this time,

1           you have to have immediate consequences for  
2           your actions. They don't have to be bad  
3           consequences, but you have to let them know I  
4           know this is going on.

5                     We're going to give you a chance to fix  
6           it. This is how we're going to take care of  
7           it. If there's some counseling that needs to  
8           be taken into consideration, do it. If  
9           there's issues they need for tutoring then go  
10          ahead and do that. I would love to spearhead  
11          a program that is school-based similar to Drug  
12          Court, but school-based to get that done.

13                    I think the answer to basically the  
14          school to jail pipeline, if you will, a lot of  
15          that can be done through alternative core  
16          programs like Drug Court or like a school-  
17          based program. I know with Scarlett Wilson,  
18          one of the things I loved about her when she  
19          came in, she goes truancy is a very big deal  
20          because most people just write off truancy.  
21          They just don't prosecute them. Get them  
22          in, see what's going on with the family, and  
23          see what's happening. If they need  
24          counseling, get it. If they need some kind of  
25          services to get back and forth, do it.

1           For substance abuse, we have a bridge  
2 program. They literally pick up the children  
3 from home, take them to counseling, and bring  
4 them back. Well, a juvenile that doesn't  
5 have transportation, that's where they need to  
6 be. They need to be in the bridge program.  
7 They don't need to be in the Charleston Center  
8 that doesn't have that access where there's no  
9 transportation.

10           Turning my role as prosecutor to a judge.  
11 I'm a very straightforward guy and I have  
12 conversations all the time with defense  
13 counsels saying "Listen, we may agree in  
14 substance about a trespassing, how horrible it  
15 is, but I'm a prosecutor." If an officer  
16 brings forward this charge, it's my job to  
17 find out what the best interest of the  
18 juvenile is, protect community safety,  
19 and find that middle ground there to figure  
20 out what to recommend and what to prosecute.  
21 But my job as a prosecutor, in this role, is  
22 ultimately to prosecute cases. That will not  
23 be my role as a judge. My role as a judge  
24 would be to sit down, listen to what's going  
25 on, apply the law, and make sure that the

1 right ruling comes out because juvenile  
2 delinquency is about rehabilitation. That's  
3 what it's about.

4 SENATOR MALLOY: And I won't keep you  
5 because I try to ask all of the judges a  
6 similar question. I am pre-filing a bill this  
7 year that will raise the threshold from 16 to  
8 17 for the juveniles except in violent cases.  
9 And so, basically, I sort of claim this to be  
10 the year of child. We have all these issues  
11 with schools, you know, School Court,  
12 Abbeville, all that kind of thing. Just  
13 interested in your position as prosecutor and  
14 what you contemplate as a judge. From what  
15 you see is that it's a threshold level on the  
16 cases that you've done and what you can see as  
17 a judge. Give us some light as to how you  
18 view that judicially because, for purposes of  
19 the committee, you know, if there's a case,  
20 you got to take it in front of the judge and  
21 see if they waive it up to the --

22 MR. FERDERIGOS: Yes. I'm in the middle  
23 of one now. There was a murder on Mother's  
24 Day sitting on my desk. That's what I've  
25 been working on.

1                   SENATOR MALLOY: Murders are different.  
2                   I think that they would be an exception even  
3                   if we raise the age.

4                   JUDGE FERDERIGOS: Yes. Under the  
5                   rules for that 16 year old to be tried  
6                   automatically as an adult, that's going to be  
7                   a -- I believe it's an A, B, C, or D felony.  
8                   Burglary used to fall under that. Burglary  
9                   second. Now it is not. It has to be burglary  
10                  violent in order to fall into that. A  
11                  burglary non-violent would no longer be that  
12                  threshold to go up. There are very few cases  
13                  that I have had where it's been an automatic  
14                  up.

15                  SENATOR MALLOY: And you've shown a  
16                  good knowledge of it. I guess, to shorten it,  
17                  does it change things from a judge's  
18                  perspective if the threshold is raised?

19                  MR. FERDERIGOS: It does because from a  
20                  judge's perspective, they'll never see it. If  
21                  it's automatic, --

22                  SENATOR MALLOY: Not automatic. You  
23                  still have those issues where you take it in  
24                  front of the judge.

25                  MR. FERDERIGOS: Okay. I'm sorry. I

1 think I misunderstood that question. There's  
2 one way. If you're 16, for certain crimes,  
3 you're automatically general sessions and you  
4 have the waiver hearings, which is to be bound  
5 over. The law's very clear on that, that the  
6 basis has to be rehabilitation starting off.  
7 You have the Kent factors. There's eight  
8 factors. So if you raise it automatically,  
9 the difference is that a judge will have the  
10 opportunity to look to determine whether or  
11 not it is appropriate for it to go up or not.

12 SENATOR MALLOY: And in my scenario, I  
13 was just changing the number from 16 to 17,  
14 nothing else except for those violent cases.  
15 They would still yet have the ability to be  
16 waived up as an adult. So I guess my  
17 real question is that do you see any real  
18 difference besides the number if you change  
19 the number from 16 to 17?

20 MR. FERDERIGOS: If you change the number  
21 from 16 to 17, do I see a difference? And  
22 that specifically -- because I want to make  
23 sure I understand your question so I want to  
24 answer directly -- is that changing the law?  
25 So for violent crimes, you have to be 17 years

1 old versus 16 years old in going up; is that  
2 correct?

3 SENATOR MALLOY: Right.

4 MR. FERDERIGOS: I do see a difference  
5 simply because it takes away. Now, I'm not  
6 saying it's a bad difference, but I do see the  
7 difference whereas in one way you have the  
8 judge analyzing it to see whether or not the  
9 juvenile should be waived up or not.  
10 For instance, if you just raise it to 17 only,  
11 there will be no 16 year olds that go up,  
12 but if you're covering it with the violent  
13 offenses, and that's really what we see  
14 because it's A, B, C, and D felony, most of  
15 those violent offenses fall under there for it  
16 to be automatic. But what I will tell you is  
17 the cases that have not been violent in nature  
18 that have gone up, I cannot think of one case  
19 that I've had that has not been remanded down  
20 by the prosecutor.

21 SENATOR MALLOY: Are you supportive of  
22 the Drug Courts?

23 MR. FERDERIGOS: It's amazing.

24 SENATOR MALLOY: Something you would work  
25 with as a judge?

1 MR. FERDERIGOS: Yes, sir. I would love  
2 to be on a Drug Court or do something  
3 different like the school initiative. It's an  
4 amazing program.

5 SENATOR MALLOY: Thank you.

6 VICE-CHAIRMAN MARTIN: Any other  
7 questions? Dean Wilcox.

8 DEAN WILCOX: Thank you for being with us  
9 this morning. You have a good bit of  
10 experience with juvenile justice. I think,  
11 and correct me if I'm wrong on this, did the  
12 law in South Carolina change in the past year  
13 or so regarding shackling of juveniles in  
14 court?

15 MR. FERDERIGOS: It did.

16 DEAN WILCOX: What was your reaction to  
17 that practice before the law changed? Was  
18 that a good practice or did you look at that  
19 as a practice that needed to be changed?

20 MR. FERDERIGOS: My personal opinion?

21 DEAN WILCOX: Yes.

22 MR. FERDERIGOS: My personal opinion is  
23 it hasn't made a difference one way or the  
24 other because you don't have a jury. You have  
25 a judge and the judge is up there seeing a

1 juvenile in handcuffs versus taking the  
2 handcuffs off right after they come into the  
3 courtroom. I don't think it's had much of an  
4 effect. We have some judges that come down  
5 that still do the shackling, regardless of  
6 what the law is, because they prefer to do  
7 that. I know it caused a disruption with the  
8 deputies for safety issues, but again, in  
9 juvenile delinquency, it's kind of rare that  
10 you get these really horrible crimes that are  
11 coming in.

12 The vast majority of juveniles, they get  
13 detained and they're out within the 48 hour  
14 detention hearing that they have coming in and  
15 they get put on house arrest or home detention  
16 and move forward that way. But specifically,  
17 to answer your question, from my opinion, I  
18 don't think it swayed rulings one way or the  
19 other. I don't think just because someone  
20 came in in handcuffs meant that they were  
21 necessarily going to go back through the  
22 detention door.

23 DEAN WILCOX: Do you think it had an  
24 impact on the juvenile to be put into  
25 shackling in the courtroom or do you think it

1 made little difference to them?

2 MR. FERDERIGOS: I think it made little  
3 difference because they're shackled literally  
4 right before they come in the courtroom  
5 and they always have a chance to speak with  
6 their defendants, you know, the public  
7 defenders or attorneys beforehand. We always  
8 give them an opportunity and they're prepared  
9 on pleas, prepared for detention hearings, and  
10 prepared to move forward and they already know  
11 what's going to go on as it comes in. The  
12 only time I've seen it be an issue was a  
13 murder case that I had. We had a juvenile  
14 that had one hand in a shackle so they could  
15 write notes to the attorney, but I don't think  
16 it had an effect on the juvenile themselves,  
17 specifically because they're literally  
18 shackled the second before they walk into that  
19 courtroom.

20 DEAN WILCOX: Let me flip and talk about  
21 abuse and neglect real quick. In your  
22 practice in Charleston in the Ninth Circuit,  
23 there are specific time frames when children  
24 enter into the DSS custody system for abuse  
25 and neglect. Are the hearings provided on a

1 relatively timely manner, in terms of ensuring  
2 the custody hearing, the findings are made in  
3 a timely manner or is there a delay in that  
4 process?

5 MR. FERDERIGOS: It depends on the judge.

6 DEAN WILCOX: What, as judge, would you  
7 do to ensure that those delays were minimized  
8 beyond what the statutory requirements are?

9 MR. FERDERIGOS: I would make sure that  
10 the statutory requirements are met and if it  
11 means working late at night, I'll work late at  
12 night if we have a caseload that goes over.  
13 For DSS cases, and I perhaps should not get up  
14 on the soap box when I'm in front of the  
15 Committee, we have a problem of a lot of DSS  
16 case workers not showing up for court  
17 when they're ordered to be there. It's a  
18 problem. It's a major problem for juvenile  
19 delinquency.

20 So what I would do is I would get on the  
21 phone and I would call their supervisor and I  
22 would make sure they show up to court because  
23 they are supposed to be there and if it means  
24 I have to work until seven o'clock at night,  
25 well, then, I've got to work until seven

1 o'clock at night because these children have a  
2 right to that hearing. The statutory period  
3 is there for a reason, just like with  
4 runaways. Runaways -- there's a, you know,  
5 three day period that you can only lock  
6 people -- keep people locked up in jail for  
7 that period of time. I make sure to get them  
8 in during that time frame because it's a black  
9 letter of the law issue, but I would ensure  
10 that that's done.

11 If a DSS worker doesn't show up, I  
12 would make sure to make the contacts necessary  
13 to have them to come to court. We're all in  
14 Charleston. We don't live far away and a lot  
15 of judges do that and it works. It's amazing  
16 what happens when a judge gets on the phone  
17 with your supervisor. You show up with a file  
18 and you're there to do what you need to do.  
19 There are also issues that have come up more  
20 recently where if a juvenile's placed in  
21 emergency protective custody of DSS, DSS  
22 shows up and says we have nothing. We have no  
23 placement for them and that's caused a  
24 conundrum in the courtroom before. I  
25 honestly don't know the answer to that other

1 than making sure to put everybody's mind  
2 together, making sure to make those contacts,  
3 and making sure to make the contacts when  
4 we're supposed to.

5 One thing that I do with my orders for  
6 juvenile delinquency, if I know that a  
7 juvenile's in DSS custody however, say a  
8 burglary happened or something like that, so  
9 they go off for a detained evaluation.  
10 There's a 45 day period I know that we have to  
11 find a placement for that juvenile. So we put  
12 in the order that DSS has to do the paperwork.  
13 They have to put out the packets and they have  
14 to come to court with the dates they put them  
15 in and explanation if it has not been founded.

16 DEAN WILCOX: Thank you, Mr. Chairman.

17 VICE-CHAIRMAN MARTIN: Anyone else?

18 (No response.)

19 VICE-CHAIRMAN MARTIN: Let me ask you one  
20 last thing. You've answered a concern that I  
21 have about demeanor. I will not dwell on  
22 that. But what about a sitting judge or judge  
23 that you've known that you might want to  
24 emulate or believe that that judge is --  
25 that's the kind of judge I want to be. Do you

1 have one?

2 MR. FERDERIGOS: That is a tough question  
3 to answer and thank you for asking that. I  
4 don't know if I have a specific judge. There  
5 are parts of many judges that I want to  
6 emulate. I will tell you this that one of the  
7 judges that I have been most impressed and I  
8 don't know if he's already come before the  
9 Committee; I know he's up for re-election.  
10 Judge Danny Martin is amazing. He has the  
11 best judicial temperament. He has had some  
12 crazy cases in front of him. Best judicial  
13 temperament, looks after the best interests of  
14 the child, and everybody who's in that  
15 courtroom knows they got a fair shake. He  
16 does not let people talk over each other. He  
17 has control of the courtroom.

18 As a judge, for me, I strongly believe in  
19 applying the rules of the evidence and  
20 applying the rules of court and applying the  
21 law. I cannot stand and I do not believe that  
22 judges should be judicial activists. That's  
23 what lawmakers are for. We're there to apply  
24 the law and that's exactly what I would do.  
25 But if I had to name one, I'm very impressed

1 with Judge Danny Martin.

2 VICE-CHAIRMAN MARTIN: You might want to  
3 consider the Supreme Court at some point and  
4 time.

5 MR. FERDERIGOS: Well, the problem is I  
6 just told you I want to do Family Court, so.  
7 On the record so that means it's going to  
8 follow me.

9 SENATOR MALLOY: I will say before Mr.  
10 Ferderigos parts is that Dean Wilcox was my  
11 trusted professor and he didn't tell me this,  
12 but another trusted professor did tell me  
13 this. He said just keep in mind that blood is  
14 thicker than water and money is thicker than  
15 blood when you start dealing with legal  
16 issues.

17 MR. FERDERIGOS: Thank you. Thank you  
18 for that.

19 VICE-CHAIRMAN MARTIN: You've answered  
20 our questions very generously and we  
21 appreciate your appearance here today. This  
22 concludes this portion of our screening  
23 process. As you know, the record will  
24 remain open until the report is published.  
25 You may be called back if the need arises. I

1 will remind you again of what Mr. Maldonado  
2 said and ask you to be mindful of that.

3 MR. FERDERIGOS: Yes, sir.

4 VICE-CHAIRMAN MARTIN: Anyone that  
5 inquires about, you know, soliciting a vote  
6 for you, you need to remind them of that, as  
7 well. We like to stress that. I thank you  
8 for offering and your willingness to serve  
9 in this very important position and we wish  
10 you the best.

11 MR. FERDERIGOS: Thank you, sir.

12 VICE-CHAIRMAN MARTIN: Good to see your  
13 wife.

14 MRS. FERDERIGOS: Thank you.

15 MR. FERDERIGOS: Thank you. I promised  
16 her lunch at Macaroni Grill so I guess I ought  
17 to -- we don't have them in Charleston. Thank  
18 y'all so much.

19 (The candidate is excused.)

20 CHAIRMAN CLEMMONS: Good morning, Ms.  
21 Forsythe.

22 MS. FORSYTHE: Good morning. How are  
23 you?

24 CHAIRMAN CLEMMONS: Still barely morning.

25 MS. FORSYTHE: I know you all have been

1 working very hard this week.

2 CHAIRMAN CLEMMONS: It's been a long  
3 week, but we're delighted to have you here.

4 MS. FORSYTHE: Thank you so much.

5 CHAIRMAN CLEMMONS: Let's start by  
6 swearing you in as a witness today. Please  
7 raise your right hand.

8 (The candidate is sworn in.)

9 CHAIRMAN CLEMMONS: Thank you very much.  
10 Do you have some special guests with you today  
11 that you'd like to introduce?

12 MS. FORSYTHE: I do. Thank you so much.  
13 My husband Rob Forsythe is here. My law firm  
14 actually had oral argument this morning in the  
15 Court of Appeals so my law partners Grady  
16 Query and Michael Sautter are here and then my  
17 associate Brooke Hurt is here. They all were  
18 at the court this morning. I had other  
19 matters to attend to.

20 CHAIRMAN CLEMMONS: What a tremendous  
21 support network. Welcome. It's good to have  
22 all of you with us today. Thank you. Have  
23 you had an opportunity, Ms. Forsythe, to  
24 review your personal data questionnaire?

25 MS. FORSYTHE: Yes, I have.

1                   CHAIRMAN CLEMMONS: And is it complete  
2 and correct?

3                   MS. FORSYTHE: Yes, it is and I believe I  
4 submitted some amendments to the personal data  
5 questionnaire, as well.

6                   CHAIRMAN CLEMMONS: That information has  
7 been received and is made an amendment to your  
8 personal data questionnaire. Do you see any  
9 need for other amendments or changes?

10                  MS. FORSYTHE: None at this time. No,  
11 sir.

12                  CHAIRMAN CLEMMONS: Thank you. Would you  
13 have any objection to the Commission making  
14 your personal data questionnaire, as amended,  
15 part of the record of your sworn testimony  
16 today?

17                  MS. FORSYTHE: I have no objection.

18                  CHAIRMAN CLEMMONS: Thank you. Is there  
19 an objection by any Commission member?

20                  (No response.)

21                  CHAIRMAN CLEMMONS: Hearing none, so  
22 ordered.

23                  [EXHIBIT NO. 6 - JUDICIAL MERIT SELECTION  
24 COMMISSION PERSONAL DATA QUESTIONNAIRE FOR  
25 MICHELE PATRAO FORSYTHE, DATED AUGUST 4TH,

1 2015, ADMITTED.]

2 [EXHIBIT NO. 7 - JUDICIAL MERIT SELECTION  
3 COMMISSION SWORN STATEMENT FOR MICHELE PATRAO  
4 FORSYTHE, DATED NOVEMBER 10TH, 2015,  
5 ADMITTED.]

6 CHAIRMAN CLEMMONS: Ms. Forsythe, the  
7 Judicial Merit Selection Commission has  
8 thoroughly investigated your qualifications  
9 for the bench. Our inquiry is focused on the  
10 nine statutory evaluative criteria and also  
11 includes a ballot box survey, a thorough study  
12 of your application materials, a verification  
13 of your compliance with state ethics laws, a  
14 search of newspaper articles in which your  
15 name appears, a study of previous screenings,  
16 and a check for economic conflicts of  
17 interest. I'm pleased to report we've  
18 received no affidavits filed in opposition to  
19 your election and there are no witnesses here  
20 to testify today, of course, other than  
21 yourself. Do you have a brief opening  
22 statement you'd like to share with the  
23 Commission?

24 MS. FORSYTHE: Only to say that it's  
25 truly an honor to be here today. At the start

1 of my legal career, I didn't really ever  
2 envision going into this venue, but I'm very  
3 pleased to be here and thank you so much. I  
4 really don't have anything else to say with  
5 that regard.

6 CHAIRMAN CLEMMONS: Thank you very much.  
7 We ask now that -- yes, Senator Malloy?  
8 You're recognized.

9 SENATOR MALLOY: Thank you, Mr. Chair.  
10 Members of the Committee, I would first start  
11 by assisting the introduction. I guess you  
12 all found out who Grady Query was not too long  
13 ago. Now, see, Grady's in the audience. I've  
14 known Grady for many years. He's back there  
15 and I think that someone made reference that  
16 he was associated -- not close -- in  
17 representation of Pee Wee Gaskins back in the  
18 earlier days and has written a book, possibly.  
19 I would just say that he obviously has been  
20 affiliated with practices that I've been  
21 affiliated with for more than 20 years.  
22 I know we have a manner currently that we're  
23 working on together and I would venture to  
24 say, and I didn't do full check, that he and  
25 his firm have contributed to my campaign at

1 least sometime during the last 13 years and  
2 we'll make certain to get a chance to verify  
3 that. So as a result, we have some  
4 communication and contact with their law firm.

5 CHAIRMAN CLEMMONS: Thank you for that,  
6 Senator Malloy. And now we would ask that you  
7 turn your attention to your screening attorney  
8 Mr. Gentry and please respond to any questions  
9 he may have.

10 MS. FORSYTHE: Yes, sir.

11 CHAIRMAN CLEMMONS: Thank you.

12 MR. GENTRY: Mr. Chairman and members of  
13 the Commission, I have a procedural manner to  
14 take care of with regards to this candidate.

15 EXAMINATION

16 (By Mr. Gentry)

17 **Q. Mrs. Forsythe, you have before you the sworn**  
18 **statement you provided with details answers to over**  
19 **30 questions regarding judicial conduct, statutory**  
20 **qualifications, office administration,**  
21 **and temperament. Are there any amendments you'd**  
22 **like to make at this time to your sworn statement?**

23 **A. No, sir.**

24 MR. GENTRY: At this time, Mr. Chairman,  
25 I would ask that Ms. Forsythe's sworn

1 statement be entered as an exhibit into the  
2 hearing record.

3 CHAIRMAN CLEMMONS: Is there any  
4 objection?

5 (No response.)

6 CHAIRMAN CLEMMONS: Hearing none, so  
7 ordered.

8 [EXHIBIT NO. 8 - JUDICIAL MERIT SELECTION  
9 COMMISSION SWORN STATEMENT FOR MICHELE PATRAO  
10 FORSYTHE, DATED JUNE 30TH, 2015, ADMITTED.]

11 **Q. Ms. Forsythe, please state for the record the city  
12 and circuit in which you reside.**

13 A. I reside in Charleston in the Ninth Circuit.

14 MR. GENTRY: I note, for the record, that  
15 based on the testimony contained in the  
16 candidate's PDQ, which has been included in  
17 the record with the candidate's consent, Ms.  
18 Forsythe meets the statutory requirements for  
19 this position regarding age, residence, and  
20 years of practice.

21 **Q. Ms. Forsythe, why do you want to serve as a Family  
22 Court judge and how do you feel your legal and  
23 professional experience this far will assist you in  
24 being an effective judge?**

25 A. I really have thought long and hard about this and

1 I have a variety of reasons for why I want to serve  
2 as a Family Court judge. I've been practicing now  
3 for 12 years and my experience has been outside of  
4 Family Court as well as in detail within the Family  
5 Court practice, but my connection has always been  
6 for service. Prior to becoming an attorney, I  
7 worked for the government and I continue to feel  
8 that call. I have to say that I have been very  
9 fortunate.

10 I have a wonderful law firm, a wonderful  
11 practice that I truly enjoy every day. I can say  
12 that my passion for the law continues to grow and  
13 because of that real deep commitment to the law,  
14 which I feel is stronger now than when I went to  
15 law school, Dean -- is actually what brings me to  
16 this place where I feel as if I have the knowledge,  
17 the requisite knowledge, have learned the requisite  
18 temperament, because I think that's really  
19 important, and that I can serve my community and do  
20 it with some sense of dignity and some sense of  
21 service to the State of South Carolina, which has  
22 really given me so much.

23 **Q. Are there any areas of law that you need to**  
24 **additionally prepare for in order to serve as a**  
25 **judge and how would you go about that preparation?**

1 A. I think in family law, the changes and the pace are  
2 fast and we have a lot of areas that continue to  
3 develop. I think that my weaknesses are in  
4 adoptions, which are statutory in nature, but based  
5 on the most recent appellate opinions, there needs  
6 to be some deeper focus on that area and I do  
7 juveniles occasionally. However, I don't feel  
8 comfortable enough to say that I don't need any  
9 review of the law in that area. And so my plan  
10 would be to read, of course, as much as possible,  
11 which I'm guilty of doing, my law firm tells me, a  
12 lot. And also, continue with my continuing legal  
13 education, which I think is so important.

14 **Q. Can you please explain what you think is the**  
15 **appropriate demeanor for a judge?**

16 A. Well, I've been in front of a lot of them, Circuit  
17 Court as well as Appellate Court and Family Court.  
18 I think the ones that stand out to me are the ones  
19 that are firm, but compassionate and listen to the  
20 litigants as well as the attorneys in argument. I  
21 think it's incredibly important to be mindful of  
22 the responsibility that a judge has, to always  
23 follow the law, but to give the litigants a stake  
24 in the process. Very often, I hear litigants  
25 complain that they just didn't feel as if they were

1 heard. I think that just comes with time to be a  
2 patient, listening, and firm judge at the same  
3 time.

4 **Q. What suggestions would you offer for improving the**  
5 **backlog cases in Family Court?**

6 A. Well, we're rounding the corner to electronic  
7 filing, which I think is going to be useful after  
8 the initial hiccups. Because of the 365 day rule,  
9 I believe that the backlog has really been  
10 minimized to a certain extent. I think one of  
11 the key components is probably for judges, at this  
12 point, is having a status conference during the  
13 course of the 365 days. That is something that we  
14 do not have in Family Court at present and I think  
15 it's incredibly important to know where the case is  
16 in terms of posture because many times we come to  
17 the 365 day mark and there's really very little  
18 activity in the case. In Circuit Court and in  
19 Federal Court, we have scheduling orders in place.  
20 I think those are very effective and important in  
21 Family Court and we should focus on that in the  
22 future.

23 **Q. Ms. Forsythe, the Commission received 124 ballot**  
24 **box surveys regarding you with 22 additional**  
25 **comments. The ballot box survey, for example,**

1 contained the following positive comments. A  
2 pleasure to work with, great demeanor, excellent  
3 attorney, well-suited for the bench. Five of the  
4 written comments expressed concerns. One survey  
5 expressed concerns with your contacting members of  
6 the Commission. Have you had any contact with  
7 members of the Commission?

8 A. I have seen many of the members of the Commission  
9 at various events. Senator Malloy has a case where  
10 we are co-counsel. However, I take the oath very  
11 seriously. I haven't had any discussions about my  
12 judicial candidacy and, in fact, avoid it at all  
13 costs possible.

14 Q. Another survey expressed concerns with your  
15 organizational skills, responsiveness, and  
16 timeliness. What response would you offer this  
17 concern?

18 A. That puzzled me and I thought back to an  
19 experience. I'm guilty of being overprepared at  
20 times. I don't really know the context of that. I  
21 can certainly say that that is not in my nature.  
22 I'm accessible at all times. Attorneys and  
23 litigants have access to my cell phone, email. In  
24 today's world, technology makes us very accessible  
25 and I try at all times to be that way. So I'm not

1 really sure of the context of it other than to say  
2 I wish they had told me their concern.

3 **Q. Another survey expressed concern with your legal**  
4 **knowledge. What response would you offer to that**  
5 **concern?**

6 A. I would say that I've been doing this for 12 years.  
7 I study hard. There is nobody that works harder  
8 than I do. I understand that I got a pretty decent  
9 score on my test and I believe that just working  
10 very hard and reading the law is so important. I  
11 struggle every day to understand the opinions that  
12 come out from the Appellate Court and make sure  
13 that my practice follows accordingly and I think  
14 that that is all anyone can do.

15 I don't know what the context was in terms of  
16 the limitations of my legal knowledge, but having  
17 practiced in Family Court and Circuit Court and the  
18 Federal Courts, I feel confident with my knowledge,  
19 but I'm also very clear that it's the practice of  
20 law for a reason. We have to constantly learn and  
21 improve.

22 **Q. One survey expressed concerns with your demeanor.**  
23 **What response would you offer to this concern?**

24 A. Also puzzling. It's my practice at all times to be  
25 open to attorneys. We have contentious cases in

1 Family Court. I am always open for discussion, but  
2 my practice is to be very warm and open and also  
3 concerned for other attorneys. There are very many  
4 times where there are heated discussions and we  
5 don't take the time to follow up and have  
6 conversations with each other. I make it a point,  
7 especially in the last few years, to always pick up  
8 the phone and say "Are you okay? Are we okay? I  
9 know that we had a pretty contentious discussion in  
10 the courthouse." But I like to make it so that I  
11 can see lawyers outside of the courtroom and still  
12 be their friends.

13 **Q. In your PDQ, you indicated that you were sued in**  
14 **2011, 2013, and 2015 over fee disputes with**  
15 **clients. Can you explain the nature of these**  
16 **lawsuits and dispositions?**

17 A. Yes. I'm a member of the Fee Dispute Resolution  
18 Board and by nature of that, all of my fee  
19 contracts have a clause for fee disputes. Because  
20 of that, there are times in Family Court where  
21 clients get upset and are looking for some sort of  
22 response. All of the fee disputes were dismissed.  
23 The last, most recent dispute of 2015, there was an  
24 accounting error. I think we returned \$62.50. As  
25 far as the entire fee, they were all dismissed

1 after investigation.

2 Q. Thank you, Ms. Forsythe. Have you sought or  
3 received a pledge of any legislator prior to this  
4 date?

5 A. No, I have not.

6 Q. Have you sought or have you been offered a  
7 conditional pledge of support of any legislator  
8 pending the outcome of your screening?

9 A. No, I have not.

10 Q. Have you asked any third parties to contact members  
11 of the General Assembly on your behalf?

12 A. No, I have not.

13 Q. Are you aware of anyone attempting to intervene on  
14 your part in the process?

15 A. No.

16 Q. Do you understand that you are prohibited from  
17 seeking a pledge or commitment until 48 hours after  
18 the formal release of the Commission's report?

19 A. I do understand that.

20 Q. Have you reviewed the Commission's guidelines on  
21 pledging?

22 A. Yes, I have.

23 Q. As a follow-up, are you aware of the penalties for  
24 violating the pledging rules? That is, it is a  
25 misdemeanor and upon conviction, the violator must

1           **be fined not more than \$1,000 or imprisoned not**  
2           **more than 90 days?**

3           A.    Yes.

4                         MR. GENTRY:  I would note that the  
5                         Lowcountry Citizens Committee found Ms.  
6                         Forsythe qualified in evaluative criteria of  
7                         constitutional qualifications, physical  
8                         health, and mental stability.  The committee  
9                         found her well qualified in evaluative  
10                        criteria of ethical fitness, professional and  
11                        academic ability, character, reputation,  
12                        experience, and judicial temperament.  The  
13                        committee stated in summary, she has  
14                        great zeal, good diversity of experience, and  
15                        as a plus, bilingual.  I would just note, for  
16                        the record, that any concerns raised during  
17                        the investigation regarding the candidate were  
18                        incorporated into the questioning of the  
19                        candidate today.  Mr. Chairman, I have no  
20                        further questions.

21                        CHAIRMAN CLEMMONS:  Thank you, Mr.  
22                        Gentry.  Members of the Commission, do you  
23                        have questions?  Senator Campsen, you are  
24                        recognized.

25                        SENATOR CAMPSEN:  No.  No question.

1                   CHAIRMAN CLEMMONS: Okay. Ms. Wall,  
2                   you're recognized.

3                   MS. WALL: Thank you. For purposes of  
4                   letting the Commission know, Ms. Forsythe and  
5                   I worked together very briefly, I believe when  
6                   she was a law clerk at Nexsen Pruet. Many,  
7                   many years ago, I think she helped me on some  
8                   legal malpractice. She helped me on some  
9                   legal malpractice matters so I knew her then.  
10                  I have not seen her since that time so this is  
11                  our first time seeing each other.

12                  Ms. Forsythe, I do have a few questions  
13                  for you. Let me go over to the fee dispute.  
14                  We know in your materials and you've briefly  
15                  responded to the question that you've been  
16                  involved in three fee disputes. How would you  
17                  respond to a question that -- do these fee  
18                  disputes indicate problems in your dealing  
19                  with clients, potentially communication  
20                  problems?

21                  MS. FORSYTHE: I think that's a very fair  
22                  question. I would say that perhaps that may  
23                  be the case. I know that fee disputes are  
24                  growing in frequency in terms of litigants,  
25                  but I am very open with my clients and one of

1 the pitfalls sometimes in domestic litigation  
2 is that you tell your clients things that they  
3 don't necessarily want to hear in terms of the  
4 likelihood of success on the merits of their  
5 case. I can only tell you that they've been  
6 three in 12 years.

7 So I feel fortunate, but that is just  
8 part of what happens and transpires in  
9 domestic litigation. As you all may know,  
10 when you're a domestic litigator, many  
11 complaints go to the Office of Disciplinary  
12 Counsel. Largely, litigants feel angry and  
13 not necessarily about circumstances, just in  
14 general. I can tell you, interestingly  
15 enough, in each of those cases, they had a  
16 wonderful result and so it's just the nature  
17 of the practice.

18 MS. WALL: Tell us, then, if you were a  
19 judge, how would you characterize how you  
20 would want to communicate with both litigants  
21 before you and their attorneys?

22 MS. FORSYTHE: Do you mean from the  
23 bench, or?

24 MS. WALL: From the bench.

25 MS. FORSYTHE: Yes. I think that's

1           extraordinarily important. I want to hear  
2           everything that a litigant has to say,  
3           certainly everything that an attorney has to  
4           say, and I'm always open to listening and  
5           paying close attention to the notes, making  
6           sure that I understand what it is that parties  
7           are trying to get across.

8           MS. WALL: Thank you.

9           CHAIRMAN CLEMMONS: Thank you, Ms. Wall.  
10          Senator Malloy is recognized.

11          SENATOR MALLOY: Thank you, Mr. Chairman.  
12          Just one second. I've done sentencing reform  
13          in South Carolina and this committee is tired  
14          of hearing about it. I'm interested in the  
15          juvenile aspect of it. One of the things that  
16          we are trying to do and I am interested in is  
17          that the children that are behind the fence  
18          and what I'm interested in is judges that are  
19          interested in alternative sentencing to the  
20          extent that they can. And also, even though  
21          they may not have a Drug Court down in  
22          Charleston, would you be interested in  
23          something as it relates to Drug Court to make  
24          certain the children get a chance to be able  
25          to exist, stay in school, and any alternative

1 as opposed to they end up going behind the  
2 wire. Could you address that?

3 MS. FORSYTHE: Yes, sir. I think my  
4 practice is varied, but my personal experience  
5 also gives me a different viewpoint in that.  
6 My husband's a police officer and has been for  
7 18 years. Because I do criminal defense, we  
8 certainly have the opportunity to have  
9 engaging discussions. And one of the things  
10 that I have seen in doing juvenile work and  
11 even doing criminal defense work with younger  
12 adults is there needs to be an opportunity for  
13 rehabilitation. I think drug court is  
14 incredibly powerful. Of course, I can't sit  
15 here as a candidate and tell you how I would  
16 intend to rule in any way, shape, or form.  
17 But I think that opportunities for children in  
18 South Carolina, particularly when they are  
19 placing themselves, generally, in situations  
20 that they shouldn't be, there should be an  
21 opportunity for them to have counseling as  
22 needed, which we do have that ability, drug  
23 court if needed, and giving them every  
24 opportunity to succeed prior to age of  
25 majority.

1                   SENATOR MALLOY: Mr. Gentry just  
2 mentioned to me that one of our earlier  
3 candidates is fluent in Spanish. He said that  
4 you speak Spanish?

5                   MS. FORSYTHE: I speak Spanish and  
6 Portuguese. I am Spanish, Portuguese, and  
7 Brazilian. That makes it very difficult come  
8 the World Cup, but my background is varied. I  
9 do speak various languages and I utilize them  
10 frequently in Family Court. Often, on  
11 occasion, magistrates will call me on the  
12 weekends and ask me to translate over the  
13 telephone. I've been asked to do it by  
14 federal judges in Portuguese and Spanish.  
15 Portuguese in particular because we simply do  
16 not have a certified Portuguese linguist in  
17 South Carolina. I do have a lot of contact  
18 with a lot of young, Hispanic people, as well,  
19 and do a lot of work with them in the  
20 community. So I am tri-lingual.

21                   SENATOR MALLOY: One of the things I've  
22 asked one of the other candidates, too, is  
23 that some Family Court judges don't let folks  
24 argue at the temporary hearings. They'll let  
25 them submit their affidavits only. So would

1           it be your desire or would it be your feeling  
2           that if counsel would ask for argument, would  
3           you allow the arguments notwithstanding or  
4           would you be willing to just allow the  
5           affidavits?

6           MS. FORSYTHE: In Charleston -- well, in  
7           the tri-county area, we generally allow  
8           argument. The court allows us to give a  
9           brief argument. I think it's helpful. It  
10          gives context. Sometimes the affidavits and -  
11          - years ago, we were allowed to submit  
12          voluminous affidavits. We have now narrowed  
13          it to eight pages. Judges comment to me  
14          privately that that's not always the most  
15          helpful scenario. So I would encourage oral  
16          argument. Particularly, the litigants want to  
17          see their attorneys doing their job and the  
18          attorneys do have a right to advocate for  
19          their client. I think that's extraordinarily  
20          powerful for the litigant and the process.

21          SENATOR MALLOY: And do you participate  
22          in mediation as it relates to Family Court?

23          MS. FORSYTHE: Yes, I do. I'm a  
24          certified Family Court mediator. I mediated a  
25          case last week in Family Court. I do custody,

1 equitable distribution, the gamut of issues in  
2 Family Court and for a time, I was doing  
3 mediations in abuse neglect cases when we  
4 were allowed to do so as a volunteer.

5 SENATOR MALLOY: And any guardian ad  
6 litem work?

7 MS. FORSYTHE: Yes. I have done  
8 significant guardian ad litem work. Much of  
9 the time, I'm asked to be a guardian ad litem  
10 in cases where the participants are Spanish  
11 speaking or Portuguese speaking, simply  
12 because I can communicate with them. It  
13 minimizes the cost for the litigants and I  
14 have done cases where I've been appointed by  
15 the court and that happens probably every six  
16 months. I'm appointed by either the Berkeley  
17 County Family Court or the Charleston County  
18 Family Court.

19 CHAIRMAN CLEMMONS: Thank you, Senator  
20 Malloy. Dean Wilcox.

21 DEAN WILCOX: Mr. Chairman, thank you. I  
22 appreciate you being with us now this  
23 afternoon.

24 MS. FORSYTHE: Thank you for having me.

25 DEAN WILCOX: One question is maybe,

1 perhaps, informational for me as much as  
2 anything, but when a child was removed from  
3 the home, there are specific deadlines for  
4 years for hearings and dispositions in that  
5 child's case. In the Ninth Circuit, are those  
6 deadlines generally being complied with or are  
7 there delays occurring beyond the statutory  
8 expectations?

9 MS. FORSYTHE: I would say, yes and yes.  
10 Well, there have been several appellate  
11 opinions that have addressed this issue.  
12 They're particularly focused on the Charleston  
13 County Family Court. In general, I believe  
14 that the Family Court judges have done a  
15 really good job of working to make sure those  
16 deadlines are met. Most of our DSS defense  
17 attorneys, the rule 608 attorneys, and private  
18 attorneys such as myself have really worked  
19 hard to make sure that those deadlines are  
20 complied with. I can tell you from personal  
21 experience, I had a case recently where it was  
22 clear that the deadline was not going to be  
23 met. I approached the department and  
24 delicately indicated to them the problem and  
25 we came to a resolution, which I think was

1                   extraordinarily powerful.

2                   DEAN WILCOX:   What could you do as judge?  
3                   That was what you did as counsel.   What could  
4                   you do as judge to make sure it's carried out?

5                   MS. FORSYTHE:   Well, what happens  
6                   during what they call a DSS docket is the  
7                   docket moves very quickly and I think the  
8                   important thing is to ask the DSS attorneys  
9                   where they are on the time line.   Many  
10                  times, it's almost as if it's a rubber stamp  
11                  that whatever DSS declares is actually the  
12                  facts of the case.   And I believe that the  
13                  more important issue is asking the DSS  
14                  attorney and the defense attorney where are  
15                  they on the deadlines, how long has the child  
16                  been in foster care if the child is in foster  
17                  care, and is there a treatment plan or a  
18                  placement plan.   The Appellate Court has made  
19                  it very clear in the last year that we need to  
20                  focus on the difference between a treatment  
21                  plan and a placement plan.   And I would ask  
22                  them specifically about that with each and  
23                  every case because it is important and they do  
24                  slide.

25                  DEAN WILCOX:   Let me move away from the

1 abuse and neglect side to the juvenile justice  
2 for a minute. You mentioned in your PDQ, you  
3 mentioned one particular case in 2010. Do you  
4 have other experience on the juvenile justice  
5 side or is that the primary experience you  
6 have on the juvenile justice side?

7 MS. FORSYTHE: That is one of my primary  
8 experiences. There have been a few others.  
9 Because of the 608 attorneys, we very rarely  
10 get private cases for juvenile. Generally,  
11 when I'm appointed, I'm appointed to a general  
12 sessions case. So, for example, this year I  
13 resolved a murder case that I was appointed to  
14 by plea, but that is a particularly striking  
15 case, which is why I put it in the PDQ. That  
16 young man was 14 years old. He was accused of  
17 a pretty significant crime. From the very  
18 beginning, he had been declaring his innocence  
19 to the North Charleston Police Department and  
20 they simply weren't listening. It took  
21 motions, as opposed to discussions with the  
22 solicitor's office, to really resolve the case  
23 and have the North Charleston Police  
24 Department conduct a thorough investigation.

25 DEAN WILCOX: And my last question is

1 purely your personal view on something and  
2 that's all I'm asking. The law changed a year  
3 or so ago regarding shackling of youths in  
4 juvenile justice cases. I think there were  
5 two views on that. One was it was a good  
6 security measure. The other was that it was  
7 some way troubling to have juveniles in  
8 shackles in the court. The law is now  
9 changed, but what is your personal view on the  
10 wisdom of shackling?

11 MS. FORSYTHE: I have to disclose that  
12 I'm on the Lawyers' Committee for Children's  
13 Rights. I was personally involved in crafting  
14 that legislation and I was personally involved  
15 in the House of Delegates when we had a very  
16 lengthy debate and I believe that Solicitor  
17 Dan Johnson is still a little angry with me.  
18 I believe that shackles on juveniles are  
19 generally unnecessary. There are always going  
20 to be defendants who are violent in nature,  
21 but having them come into the courtroom with  
22 the shackles, I think from a personal  
23 perspective, demeans the process in Family  
24 Court.

25 If we are not looking at their charges as

1 crimes, then we certainly need to treat them  
2 in a different way and that is why I  
3 passionately advocated in front of the House  
4 of Delegates to pass that and have that go  
5 forward to the legislature and it did. I'm  
6 particularly proud of that. I had some  
7 debate with my husband about it. I think that  
8 what we did was give law enforcement the tools  
9 that they need to ensure safety and security  
10 in the courtroom, which I think is very  
11 important and they do an amazing job, but at  
12 the same time we need to remember that the  
13 defendant is a child and sometimes we do  
14 forget that.

15 DEAN WILCOX: Thank you. Mr. Chairman,  
16 those are my questions.

17 CHAIRMAN CLEMMONS: Thank you. Yes,  
18 Senator Martin, you're recognized.

19 SENATOR MARTIN: I will be brief. I  
20 think you responded to me very adequately and  
21 to the Commission very adequately regarding  
22 your views on demeanor and that's a big  
23 concern of mine about family court judges.  
24 But have you had a judge that you've  
25 observed over the years or know about by

1 reading, by reputation, whatever that you most  
2 would want to emulate on the bench and in your  
3 role as a judge? Who would it be?

4 MS. FORSYTHE: Well, there are a few, if  
5 you'll indulge me. I'd start by saying that  
6 this seat has been occupied by Judy McMahon  
7 for 33 years. She has done an amazing job and  
8 she is always calm, cool, and collected. She  
9 gives attorneys and litigants alike the  
10 opportunity to speak freely in her courtroom  
11 and she takes time to consider issues. She  
12 does not hesitate to pick up the phone and  
13 have a telephone conference and I think  
14 everybody will miss her.

15 There are other judges, too, that I  
16 really admire. One is Michael Duffy, Federal  
17 Court judge. His demeanor in the Federal  
18 Court is always a delight. He always has a  
19 sense of humor. He's very serious when he  
20 needs to be and he's also very compassionate.  
21 I don't think anybody thinks he's a pushover,  
22 but he does show his compassionate side quite  
23 frequently and for me he is just beyond par.

24 And then finally I'd say that I had the  
25 pleasure of trying what I think is my first

1 really big jury trial case in front of Clifton  
2 Newman. He and I, since that time, just have  
3 an amazing rapport. He, too, is a very  
4 patient, firm judge. I have seen him in court  
5 in Newberry, here in Richland, and of course,  
6 in Charleston County and each and every time  
7 he is very deliberative and thoughtful in his  
8 decisions. I know that he sometimes struggles  
9 with those decisions, but he's mindful of  
10 that. And that's what I think is so important  
11 is from a demeanor perspective, to make the  
12 decision carefully and thoughtfully, but make  
13 the decision.

14 SENATOR MARTIN: Thank you.

15 CHAIRMAN CLEMMONS: I just have one brief  
16 question for you.

17 MS. FORSYTHE: Yes, sir.

18 CHAIRMAN CLEMMONS: There was a  
19 perception by many that there are times when  
20 these or those elected to the Family Court  
21 bench see that the election to Family Court  
22 bench is an opportunity to advance to the next  
23 court in Circuit Court or beyond. Can you  
24 share your view with regard to what might be a  
25 practice for some?

1 MS. FORSYTHE: Well, for me, probably the  
2 hardest thing I ever had to do was tell my law  
3 partners that I wanted to run for Family  
4 Court, but their response was why not Circuit  
5 Court. And the reality for me is that I'm  
6 passionate about Family Court, the  
7 domestic litigation, children, and the issues  
8 are exciting. They're dynamic, they're  
9 evolving and there's a lot of change and  
10 growth coming in the next few years in Family  
11 Court. I don't know the idea of it being a  
12 stepping stone. I've certainly heard that  
13 before, but for me, I take it very seriously.

14 I see this as a huge opportunity just to  
15 be able to be in front of you, for me, coming  
16 from my particular background where my parents  
17 were immigrants and they didn't speak English  
18 and I did most of the translating as a young  
19 kid. This is what I desire. This is truly  
20 what I'm passionate about and the legal issues  
21 are fascinating. They may make your eyes  
22 glaze over, but I find them fascinating.

23 CHAIRMAN CLEMMONS: Thank you very much.  
24 We certainly see your passion.

25 SENATOR CAMPSEN: Mr. Chair?

1 MS. FORSYTHE: Thank you.

2 CHAIRMAN CLEMMONS: Yes, Senator Campsen.

3 SENATOR CAMPSEN: Thank you for appearing  
4 before us and for offering this position. One  
5 question is under our Constitution, the  
6 judicial branch is to interpret and apply law,  
7 executive to execute, legislative to make law  
8 or policy. And as a judge, how would you  
9 guard yourself or what are the principles  
10 you'd employ to make sure you don't cross the  
11 line between interpreting and applying the law  
12 with fact and making policy from the bench?

13 MS. FORSYTHE: I think that is really one  
14 of the keys in today's day and age. It is  
15 very easy in Family Court to utilize the best  
16 interest of the child as a catch-all and  
17 forget about the very detailed statutory  
18 framework in Family Court and the children's  
19 code. And in addition to that, I think you  
20 always have to be mindful that the decisions  
21 you make have such an impact and because of  
22 that, you really need to follow the law and  
23 the legislature has worked really hard to  
24 respond to the appellate courts.

25 For example, I know that there is alimony

1           legislation that is being discussed at present  
2           in order to solve some of the issues that were  
3           raised in an appellate opinion. And I think  
4           that you must follow the law and I have a  
5           great balance in my practice where many times,  
6           I'm just very realistic about how things will  
7           unfold. And I think that that can carry  
8           forward if I were to serve on the bench and  
9           just be mindful.

10           There are some things you simply cannot  
11           do. You don't have the jurisdiction or  
12           authority to do so as a Family Court judge.  
13           Those powers are enumerated specifically and  
14           on an annual basis they may change, but you  
15           much follow the law as it is written and you  
16           must be mindful of the decisions you make  
17           because the Appellate Court is watching.

18           CHAIRMAN CLEMMONS: Thank you. Seeing no  
19           further questions by Commission members, we  
20           want to thank you for being with us today, Ms.  
21           Forsythe and we observe your passion for the  
22           Family Court. That will conclude this portion  
23           of the screening process. As you know, the  
24           record will remain open until the report is  
25           published. If that need should arise, you may

1 be called back at that time. We ask you to be  
2 mindful of the 48-hour rule and if anybody  
3 should ask you whether or not they may  
4 advocate on your behalf, we would ask you to  
5 instruct them on the 48-hour rule.

6 MS. FORSYTHE: Absolutely.

7 CHAIRMAN CLEMMONS: We thank you very  
8 much for offering and we want to thank you for  
9 being here today.

10 MS. FORSYTHE: Thank you so much. Thank  
11 you.

12 CHAIRMAN CLEMMONS: Also say to your  
13 husband thank you for serving in --

14 MS. FORSYTHE: Thank you. Y'all have a  
15 great afternoon.

16 (The candidate is excused.)

17 CHAIRMAN CLEMMONS: Commission members,  
18 just to kind of give you an update. You may  
19 smell lunch and there's a good reason for that  
20 because it is here and I'd like to thank our  
21 benefactor of the day. Michael provided lunch  
22 and Senator Malloy started this process and it  
23 continues. However, we are two candidates  
24 behind in the schedule. What I would propose  
25 is let's get through those two candidates. We

1 will then go into executive session and we can  
2 eat lunch while we are in executive session.

3 CHAIRMAN CLEMMONS: Good morning, Mr.  
4 Keefer. It's good to have you with us today.  
5 Thank you for offering for Family Court, Ninth  
6 Judicial Circuit, Seat Three. Ladies and  
7 gentlemen, we have before us Mr. Sean F.  
8 Keefer. Mr. Keefer, would you raise your  
9 right hand and be sworn?

10 (The candidate is sworn in.)

11 CHAIRMAN CLEMMONS: Thank you very much.  
12 Mr. Keefer, have you had an opportunity to  
13 review your personal data questionnaire?

14 MR. KEEFER: I have. Yes, sir.

15 CHAIRMAN CLEMMONS: Okay. Is it complete  
16 and correct?

17 MR. KEEFER: Yes, sir.

18 CHAIRMAN CLEMMONS: Does it need any  
19 changes or amendments at this time?

20 MR. KEEFER: It does not.

21 CHAIRMAN CLEMMONS: Would you have any  
22 objection to that personal data questionnaire  
23 being made a part of the record of your  
24 testimony today?

25 MR. KEEFER: Absolutely not.

1                   CHAIRMAN CLEMMONS: Thank you. Is  
2                   there any objection by Commission members?

3                   (No response.)

4                   CHAIRMAN CLEMMONS: Hearing none, so  
5                   ordered.

6                   [EXHIBIT NO. 9 - JUDICIAL MERIT SELECTION  
7                   COMMISSION PERSONAL DATA QUESTIONNAIRE FOR  
8                   SEAN F. KEEFER, DATED AUGUST 6TH, 2015,  
9                   ADMITTED.]

10                  CHAIRMAN CLEMMONS: Mr. Keefer, the  
11                  Judicial Merit Selection Commission has  
12                  thoroughly investigated your qualifications  
13                  for the bench. Our inquiry is focused on the  
14                  nine statutory evaluative criteria and has  
15                  also included a ballot box survey, a study of  
16                  your application materials, verification of  
17                  your compliance with state ethics laws, a  
18                  search of newspaper articles in which your  
19                  name appears, a study of previous screenings,  
20                  and a check for economic conflicts of  
21                  interest. We have received no affidavits  
22                  filed in opposition to your election and there  
23                  are no witnesses present to testify today  
24                  other than yourself. Do you have a brief  
25                  opening statement that you'd like to share

1 with the Commission today?

2 MR. KEEFER: I know this has been a busy  
3 week for y'all and y'all have had a lot of  
4 stuff that y'all were doing. Thank y'all for  
5 your service. It's very important to me. I  
6 think that the judiciaries are one of the most  
7 important things we have in the legal system  
8 in South Carolina. I want to thank each and  
9 every one of y'all for devoting your time to  
10 making sure that the folks that we have on the  
11 bench are deserving, qualified to serve the  
12 citizens of South Carolina. It's an honor for  
13 me to be here today and I think you for your  
14 consideration and I'm happy to answer any  
15 questions that you have.

16 CHAIRMAN CLEMMONS: Thank you, Mr.  
17 Keefer.

18 MR. KEEFER: Closer to me? I'm sorry. I  
19 think that's the first time in eons when I was  
20 told that I was not speaking loud enough. Do  
21 you need me to repeat any of that?

22 CHAIRMAN CLEMMONS: No. I think we're  
23 fine. The court reporter just needed to have  
24 a little increase.

25 MR. KEEFER: Certainly and I apologize

1 for that.

2 CHAIRMAN CLEMMONS: Thank you. Mr.  
3 Keefer, if you would please direct your  
4 attention to the screening attorney.

5 MR. KEEFER: Certainly.

6 CHAIRMAN CLEMMONS: And respond to his  
7 questions. Thank you.

8 MR. DAVIDSON: Thank you Mr. Chairman

9 EXAMINATION

10 (By Mr. Davidson)

11 **Q. Mr. Keefer, you have before you the sworn**  
12 **statement you provided with the detailed answers to**  
13 **over 30 questions regarding judicial conduct,**  
14 **statutory qualifications, office administration,**  
15 **and temperament. Are there any amendments you'd**  
16 **like to make at this time?**

17 **A. No, sir.**

18 MR. DAVIDSON: Mr. Chairman, I'd like to  
19 ask that his sworn statement be entered as an  
20 exhibit into the record.

21 CHAIRMAN CLEMMONS: Is there any  
22 objection?

23 (No response.)

24 CHAIRMAN CLEMMONS: Hearing none, so  
25 ordered.

1 [EXHIBIT NO. 10 - JUDICIAL MERIT  
2 SELECTION COMMISSION SWORN STATEMENT FOR SEAN  
3 F. KEEFER, DATED AUGUST 6TH, 2015, ADMITTED.]

4 MR. DAVIDSON: Thank you.

5 **Q. Mr. Keefer, please state for the record the city  
6 and circuit in which you reside.**

7 A. I reside in Charleston, South Carolina. It's in  
8 the Ninth Judicial Circuit.

9 **Q. Thank you.**

10 MR. DAVIDSON: I note for the record that  
11 based on the testimony contained in the  
12 candidate's PDQ, which has been included in  
13 the record with the candidate's consent, Mr.  
14 Keefer meets the statutory requirements for  
15 this position regarding age, residence, and  
16 years of practice.

17 **Q. Mr. Keefer, would you please explain to the  
18 Commission why you would like to serve as a Family  
19 Court judge and how do you feel your legal and  
20 professional experience will assist you to be an  
21 effective judge?**

22 A. I started practicing law back in 1997. When I  
23 went to law school, it had always been a goal of  
24 mine to serve as a family court attorney. I  
25 started working in a firm that handled a variety of

1 domestic matters. I was trained as a mediator.  
2 Soon after that I began to do work as a guardian ad  
3 litem, went to work for a firm that did more of a  
4 general practice, including in that family court  
5 work, to a firm that did primarily family court  
6 work.

7 That's always been a focus of my legal  
8 practice. Done extensive work with DSS  
9 representing parties and DSS representing guardians  
10 ad litem. I've represented children in the  
11 juvenile justice system and through that, coupled  
12 with my ADR experience, which includes mediation,  
13 arbitration, and as I said, my private guardian ad  
14 litem work through the years. My legal career, if  
15 you will, has been built in and around family  
16 courts.

17 I am confident that my experience while  
18 working with other attorneys has prepared me to  
19 take a step to move to the bench and to be a member  
20 of the judiciary. And I believe that the skills  
21 that I've learned and knowledge that I've gained  
22 came from that. I think the temperament that I  
23 have to look at cases would make me an asset to the  
24 bench and make me an effective family court judge.

25 From a standpoint of wanting to do it, we

1 haven't had a lot of openings down in the  
2 Charleston County area. It's just been the last  
3 couple of years we've had seats opened up that just  
4 happened to coincide with a time in my professional  
5 career to where I believe I have the requisite  
6 experience. And they would take that test and  
7 could make a positive benefit not only on the  
8 bench, but to the people of Charleston County in  
9 South Carolina.

10 **Q. Thank you. Are there any areas of law that you**  
11 **need to additionally prepare for in order to serve**  
12 **as a judge and if so, how would you handle that**  
13 **additional preparation?**

14 A. Not to say that there are not going to be novel  
15 areas of law that are going to be developing. For  
16 instance, recently the Supreme Court decision that  
17 we're going to be seeing over the next number of  
18 years of an increase in same sex marriages and  
19 couples coming through the court to present issues  
20 that have, in part, we've considered before, but  
21 never in that context. As that comes along, that's  
22 going be something that we're going to have to be -  
23 - or the members of judiciary if I am one, being  
24 the same, we'd have to mindful of and make sure  
25 that information is gained on that.

1 I've never served as a prosecutor. I've never  
2 served as a staff attorney for DSS. While I have  
3 had experience in those areas, I think that it may  
4 be a little bit of work just to make sure I'm  
5 polished through on that. But for the cases that  
6 go through Family Court, in a large part I feel  
7 that I've had exposure and if I needed to do  
8 anything I feel that, one, I'd be able to know when  
9 I needed to look at something additional and, two,  
10 I would be able to readily find it.

11 **Q. Thank you. Could you please explain what you think**  
12 **is the appropriate demeanor for a judge?**

13 A. I think they need to be attentive. I think they  
14 need to be courteous. I think they need to make  
15 sure that every party that comes before them  
16 understands they are being heard. I think  
17 they need to balance the facts of the case against  
18 the law as it exists in South Carolina and provide  
19 a well-reasoned, timely decision, let folks know  
20 that they have been heard and be able to make those  
21 difficult decisions.

22 My goal, if I was on the bench, would be to be  
23 able to have people come into the court and just  
24 realize simply that, that they have had their  
25 opportunity to be heard, that I had not made a rash

1 decision, that I had not done something that was  
2 outside of the bounds of the law in South Carolina,  
3 and that they could walk out of that courtroom  
4 knowing that they had had their day in court.

5 **Q. What suggestions would you offer for improving the**  
6 **backlog of cases on the docket?**

7 A. Timely disposition, holding the attorney's feet to  
8 the fire on getting attorney's memos, cases moved  
9 along, granting continuances only on the most  
10 deserving of cases, and making sure that you're  
11 doing everything to adjudicate and hear all the  
12 cases that are brought before you.

13 **Q. Thank you, Mr. Keefer. The Commission received 122**  
14 **ballot box surveys regarding your candidacy and**  
15 **nine additional comments. The ballot box survey,**  
16 **for example, contained the following positive**  
17 **comments. Sean has one of the best temperaments**  
18 **for this position possible and the knowledge to do**  
19 **an amazing job. Sean is known to be level-headed**  
20 **and competent attorney, mediator, and guardian ad**  
21 **litem. I believe he possesses the patience,**  
22 **empathy, and temperament required of a Family Court**  
23 **judge. I believe he's head and shoulders above**  
24 **others in terms of depth and breadth of Family**  
25 **Court experience. Sean has acted as a guardian ad**

1 litem for a minor child in a case where I was  
2 representing the party. He went to extraordinary  
3 lengths to investigate and present findings to the  
4 court on behalf of the represented minor. Always  
5 did what he said he was going to do.

6 Two of the written comments expressed  
7 concerns. One comment stated, as a guardian ad  
8 litem, he does not always follow through on what he  
9 says he's going to do, but he talks a good game.

10 What response would you offer to this concern?

11 A. I've never had a situation where its been brought  
12 to the court's attention or to even my attention  
13 that I've missed something, not done something, or  
14 thoroughly investigated a case where I was serving  
15 as a guardian ad litem. I will not stand before  
16 this Commission and say that in every case where  
17 I've been a guardian, I've talked to every possible  
18 witness if it exists in a case, but I feel that  
19 every case where I've served as a guardian, I've  
20 talked to everyone, done everything, done an  
21 investigation thorough to the point to where I felt  
22 I was able to not only protect the best interest of  
23 the minor child or children, but to make sure that  
24 the court was well-informed on any issues that were  
25 of concern or that I felt relevant or needed to be

1 addressed regarding the minor child or children or  
2 parties.

3 Q. Thank you. Another comment stated, quote, while  
4 Sean has all the makings of a great judge, he lacks  
5 the ability to make difficult and unpleasant  
6 decisions. He recently has taken up arbitration  
7 and the verdicts rendered fail to answer any  
8 questions that are weak in their direction. I have  
9 serious concerns of Sean's ability to make  
10 difficult decisions and render clear verdicts.  
11 While I would love to have Sean judge, I do  
12 perceive problems with that appointment. What  
13 response would you offer to this comment?

14 A. Every case that I've ever arbitrated, I felt that  
15 my decision was very well-reasoned. I have a  
16 reputation for writing long arbitration awards  
17 because I'm going to make sure that folks know  
18 exactly what I'm thinking. And I feel that every  
19 arbitration award I've ever done has been factually  
20 and legally proper application of the law in South  
21 Carolina. Decisions are what Family Court judges  
22 make and you're going to have to make those  
23 decisions. I will not be afraid to make any  
24 decision. I will not be afraid to give the  
25 appropriate reason for decisions. I will not be

1           afraid to make sure the parties and counsel  
2           know the reason behind those decisions.

3                   MR. DAVIDSON: Mr. Chairman, at this time  
4           I'd like to request that we go into executive  
5           session.

6                   CHAIRMAN CLEMMONS: Thank you. Do we  
7           have a motion?

8                   SENATOR MALLOY: So moved.

9                   CHAIRMAN CLEMMONS: We have a motion.  
10          The veil will be lowered. Non-commission  
11          members and staff members, we'd ask that you  
12          leave the room and security would secure the  
13          doors. Thank you.

14                   (Off-the-record executive session.)

15                   CHAIRMAN CLEMMONS: Can we open the  
16          doors, please? We're back on the record.

17                   MR. KEEFER: Should I turn this back on?

18                   CHAIRMAN CLEMMONS: You may. Please.  
19          We're back on the record from executive  
20          session with no decisions made or votes taken  
21          on to review the matters. Mr. Davidson.

22                   (By Mr. Davidson)

23          **Q. Thank you, Mr. Keefer. I have a few housekeeping**  
24          **issues that I'm going to roll through quickly.**  
25          **Have you sought or received a pledge of any**

1           legislator prior to this date?

2           A.    No, sir.

3           Q.    Have you sought or have you been offered a  
4           conditional pledge of support of any legislator  
5           pending the outcome of your screening?

6           A.    No, sir.

7           Q.    Have you asked any third parties to contact members  
8           of the General Assembly on your behalf?

9           A.    No, sir.

10          Q.    Are you aware of anyone attempting to intervene in  
11          any part of the process on your behalf?

12          A.    No, sir.

13          Q.    Have you contacted any members of the Commission?

14          A.    No, sir.

15          Q.    Do you understand that you are prohibited from  
16          seeking any pledge or commitment until 48 hours  
17          after the formal release of the Commission's  
18          report?

19          A.    Absolutely.

20          Q.    Have you reviewed the Commission's guidelines on  
21          pledging?

22          A.    Absolutely.

23          Q.    As a follow-up, are you aware of the penalties for  
24          violating the pledging rules, that is it is a  
25          misdemeanor and upon conviction, the violator must

1           **be fined not more than \$1,000 or imprisoned not**  
2           **more than 90 days?**

3           A.    Absolutely.

4                         MR. DAVIDSON:   Thank you.   I would  
5                         note that the Lowcountry Citizens Committee  
6                         found Mr. Keefer qualified in the evaluative  
7                         criteria of constitutional qualifications,  
8                         physical health, and mental stability.  They  
9                         found him well qualified in all of the  
10                        remaining criteria, that is ethical fitness,  
11                        professional and academic ability, character,  
12                        reputation, experience, and judicial  
13                        temperament.  I'd also note that any concerns  
14                        raised during the investigation regarding the  
15                        candidate were incorporated into the  
16                        questioning today.  I've no further questions,  
17                        Mr. Chairman.

18                        CHAIRMAN CLEMMONS:   Thank you very much.  
19                        Are there questions by Commission members?  
20                        Dean Wilcox.

21                        DEAN WILCOX:   Thank you, Mr. Chairman.  
22                        Again, thank you for appearing once again  
23                        before us.  Appreciate it.  I wanted to ask  
24                        you if you could clarify one statement that  
25                        you made on your sworn statement regarding

1 when it's appropriate to have ex parte  
2 communications. In there, you say general  
3 rules, they should be avoided, but in matters  
4 where there are emergent issues, such  
5 communications are to be expected at the  
6 outset of an action and then you go on to talk  
7 about matters such as financial wasting,  
8 serious financial consequences, harm or the  
9 threat of harm to children, race issues where  
10 ex parte communications could be appropriate.

11 MR. KEEFER: Certainly.

12 DEAN WILCOX: Can you elaborate a little  
13 bit on that for me and help me understand what  
14 you're --

15 MR. KEEFER: Sure. Sure. Nutshell,  
16 case is beginning and one spouse sees that  
17 bank account, investments, assets of liquid  
18 form, 401K, retirement, whatever had been at a  
19 certain level on this bank statement or this  
20 statement and then suddenly, they diminish. I  
21 believe that it would be appropriate to file a  
22 summons and a complaint and a motion for ex  
23 parte relief asking that any of those bank  
24 accounts be frozen until defendant could be  
25 served, quickly given an opportunity to be

1 heard.

2 Children's issues -- and I think  
3 children's issues would probably be more --  
4 not to minimize financial concern, but I think  
5 children's issues are paramount. Two spouses,  
6 one of them is out allegedly playing golf with  
7 the children, but the other spouse at home  
8 gets a call and says raided a drug house,  
9 arrested everybody. Your children are here.  
10 Can you come get them so we don't have to take  
11 them to DSS? That parent goes and gets the  
12 children. I think it's appropriate to file a  
13 summons and a complaint. An ex parte motion  
14 is a part of that saying no contact because of  
15 arrest at meth house, drug house, however you  
16 want to term it. Serve the defendant. Give  
17 them an opportunity to be heard rather than  
18 that.

19 Emergent issues that I think would  
20 need some ability to be addressed, obviously  
21 giving the defendant in each of those cases an  
22 opportunity to be heard in a timely fashion.

23 DEAN WILCOX: Are there specific  
24 statutory provisions that you would act under  
25 there where you would be allowed to give that

1 relief without --

2 MR. KEEFER: Well, I believe that the  
3 rules of Family Court, as they exist, allow  
4 for a plaintiff to make an application for ex  
5 parte relief supported by the appropriate  
6 affidavit. I mean, much the same as when DSS  
7 would go through and get an applicable  
8 statutory authority to have a child removed  
9 pending some emergent issue.

10 DEAN WILCOX: But you're talking then in  
11 terms, though, of when you -- what you're  
12 referring to is places where the statute  
13 specifically permits ex parte to be granted?

14 MR. KEEFER: I'm not creating a new body  
15 of law. I'm being very surgical under  
16 existing law for emergent issues that -- in a  
17 large part, I would look at it kind of like  
18 injunctive relief. If we don't do something  
19 now, financial wasting or in the decision  
20 with children, harm to children.

21 DEAN WILCOX: I think that helps. One  
22 other question just about your experience. It  
23 looks to me like, particularly regarding abuse  
24 and neglect, that since about 2010, if I'm  
25 reading it correctly, you've been primarily

1 representing guardians as opposed to the  
2 parties. Is that a correct attribution of  
3 what you've been doing the last five years or  
4 so or am I just --

5 MR. KEEFER: So the last five of my  
6 practice would be defined as this,  
7 representing some folks in contested matters  
8 in the Family Court. In full disclosure  
9 there, I've been cherry picking my cases. I  
10 don't take any case that walks in the door. I  
11 was involved for a period of time representing  
12 defendants in a contract basis, much the same  
13 as the 608 attorneys do now going through the  
14 Family Court process.

15 From 2010 to about 2012, I represented  
16 the Berkeley County volunteer guardian ad  
17 litem. My wife then took that job and I  
18 served as kind of her back-up and I still do  
19 from time to time. The rest of my work post  
20 2010 has been structured towards private  
21 guardian ad litem work where I serve as the  
22 guardian ad litem or alternative dispute  
23 resolution in the form of primarily  
24 mediations, but half a dozen arbitrations a  
25 year.

1 DEAN WILCOX: Thank you.

2 SENATOR MARTIN: Mr. Chairman.

3 CHAIRMAN CLEMMONS: Senator Martin is  
4 recognized.

5 SENATOR MARTIN: Mr. Keefer, one major  
6 concern is the demeanor of being Family Court  
7 judge and you've addressed in the questions of  
8 counsel your thoughts on that. I really  
9 appreciate and respect the way you view the  
10 importance of that in a judicial role. Let me  
11 ask you, what judge out there best emulates  
12 the type of judge you would like to be?

13 MR. KEEFER: Judge Daniel Martin in  
14 Charleston, South Carolina. I respect him in  
15 ways that I can't even put into words. His  
16 demeanor on the bench, if I could get into the  
17 arena that he embodies when he does that, I  
18 would consider it to be a success. He is  
19 courteous, he is attentive. I have not heard  
20 a -- and as a mediator, I spend a lot of time  
21 talking with attorneys and when you're doing  
22 mediations, attorneys love to tell you what  
23 they think about the other attorneys, the  
24 judges, the this, the that. I have never  
25 heard a negative thing about Judge Martin. If

1 I could emulate him, I'd have a smile on my  
2 face.

3 SENATOR MARTIN: Thank you very much.

4 CHAIRMAN CLEMMONS: Any other questions?

5 SENATOR MALLOY: Mr. Chair.

6 CHAIRMAN CLEMMONS: Senator Malloy.

7 SENATOR MALLOY: Briefly moving along.

8 Are you a certified mediator in the Family  
9 Court?

10 MR. KEEFER: I am a certified mediator in  
11 the Family Court. I did the training in 1999.  
12 I was certified through the Bar certification  
13 process. I've maintained that through and  
14 through. I also -- alternative dispute  
15 resolution is huge to me. I'm currently the  
16 head of the Bar's Dispute Resolution Council  
17 and I hold a seat in that hot seat on the  
18 Supreme Court's ADR Commission.

19 SENATOR MALLOY: So you did mediation a  
20 long time ago?

21 MR. KEEFER: I've done mediation for 15  
22 years. Yes, sir.

23 SENATOR MALLOY: And how long have you  
24 been practicing?

25 MR. KEEFER: I've been practicing since -

1 - you know, we're getting close to it being  
2 almost the anniversary of, you know, since  
3 1997. So I was sworn in in November of 1997  
4 so we're --

5 SENATOR MALLOY: You started right away  
6 doing the mediation?

7 MR. KEEFER: Sir?

8 SENATOR MALLOY: You started right  
9 away doing the mediation?

10 MR. KEEFER: I was licensed in '97 and  
11 then two years later I was certified and it's  
12 been a part of my practice through and  
13 through.

14 SENATOR MALLOY: And do you do guardian  
15 ad litem work, as well?

16 MR. KEEFER: Absolutely. At any point in  
17 time, I've got anywhere from six to ten  
18 guardian cases.

19 SENATOR MALLOY: And at temporary  
20 hearings, do you ever go in front of a judge  
21 where they only allow affidavits?

22 MR. KEEFER: Absolutely. Absolutely.

23 SENATOR MALLOY: And you go in front of  
24 judges that allow arguments?

25 MR. KEEFER: So before for the temporary

1 hearing is it's all done by affidavit. The  
2 majority of the time, you allow arguments, but  
3 every so often, we do get curve balls where  
4 the court says let me look over these  
5 affidavits and I'll give you my decision. We  
6 sit there 15 minutes in silence.

7 SENATOR MALLOY: As a judge, will you  
8 give me your thoughts on letting lawyers, when  
9 they appear with their clients, be given the  
10 opportunity to make an argument.

11 MR. KEEFER: My thought is this and I'm  
12 going to tie two things, Senator, together  
13 that you said. When I've served as a  
14 mediator, I have to work very hard to let  
15 folks know that I'm not a judge because the  
16 average person goes in front of a mediator  
17 probably less than they go in front of a  
18 judge. They want someone to hear their case.  
19 They want to feel that their position has been  
20 laid out to someone. I think that rolls over  
21 into the temporary hearing aspect, as well.  
22 I believe, knowing what it costs to prepare  
23 for and go to a temporary hearing in legal  
24 fees, knowing how the majority of the  
25 attorneys prepare, I believe that if I

1 am sitting on the bench and I'm having a  
2 temporary hearing, I believe the parties  
3 deserve to have their attorney, to have their  
4 champion, to have the person that they are  
5 paying to be their representative in court get  
6 up and argue their position because the last  
7 thing -- is that sufficient?

8 SENATOR MALLOY: Fair enough and I want  
9 to ask you quickly about the juvenile justice.  
10 I'm a fan of alternative sentencing and  
11 keeping children from behind the wire, from  
12 behind the bars. Are you involved with --  
13 well, let me ask you this. As a judge, would  
14 you be supportive of drug courts in the family  
15 court system?

16 MR. KEEFER: Through my time working as  
17 an attorney, I've worked with not only  
18 juvenile drug courts, but adult drug courts.  
19 I believe that juvenile offenders -- you have  
20 to approach these juvenile offenders with a  
21 theory of rehabilitation, of keeping them away  
22 from Columbia.

23 SENATOR MALLOY: Enough said.

24 MR. KEEFER: No offense on Columbia.

25 SENATOR MALLOY: You answered my

1 question.

2 CHAIRMAN CLEMMONS: Thank you, Senator  
3 Malloy. Any other questions?

4 (No response.)

5 CHAIRMAN CLEMMONS: Hearing none. Mr.  
6 Keefer, we want to thank you so much for being  
7 with us today and offering for this important  
8 position on court. That concludes this  
9 portion of our screening process. As you  
10 know, the record will remain open until the  
11 report is published. You may be called back  
12 at such time if that need should arise. We  
13 would remind you of the 48-hour rule and then  
14 penalties related for breaking that and if  
15 anybody should ask you if they could advocate  
16 on your behalf, we would ask that you instruct  
17 them on the 48-hour rule and it's penalties.  
18 We thank you again for offering. Thank you  
19 for your desire to serve the state of South  
20 Carolina.

21 MR. KEEFER: Thank y'all individually and  
22 collectively. Thanks. Y'all have a great  
23 day.

24 (The candidate is excused.)

25 CHAIRMAN CLEMMONS: We've had a request

1 to break for thirty minutes for lunch and take  
2 our last candidate after lunch. So at this  
3 time, we will recede.

4 (Off the record.)

5 CHAIRMAN CLEMMONS: Ladies and gentlemen,  
6 we are back on the record with regard to  
7 nominations for Family Court, Ninth  
8 Judicial Circuit, Seat 3. And we have before  
9 us Ms. Rita J. Roache. Ms. Roache, it's a  
10 pleasure to have you with us today. Thank you  
11 again for your patience. We've gotten behind  
12 today and then we had a famished senator that  
13 we had to feed. So thank you very much for  
14 your patience.

15 MS. ROACHE: Certainly.

16 CHAIRMAN CLEMMONS: Ms. Roache, if you  
17 would please raise your right hand and be  
18 sworn.

19 (The candidate is sworn in.)

20 CHAIRMAN CLEMMONS: Thank you very much.  
21 Ms. Roache, have you had an opportunity to  
22 review your personal data questionnaire in its  
23 present form?

24 MS. ROACHE: Not this one, but I reviewed  
25 it prior to submitting the form.

1 CHAIRMAN CLEMMONS: Prior to submission?

2 MS. ROACHE: Yes.

3 CHAIRMAN CLEMMONS: Would you take a  
4 moment and review it to verify that it is  
5 complete and in no need of amendment or  
6 change?

7 MS. ROACHE: Yes, sir.

8 CHAIRMAN CLEMMONS: Thank you.

9 MS. ROACHE: Mr. Chairman, I reviewed it.

10 CHAIRMAN CLEMMONS: Thank you very much.  
11 Do you find it to be complete?

12 MS. ROACHE: Yes, sir. I do.

13 CHAIRMAN CLEMMONS: Is there any need for  
14 change or amendment?

15 MS. ROACHE: Not that I am aware of at  
16 this time, sir.

17 CHAIRMAN CLEMMONS: Thank you. Do you  
18 have any objection to -- I'm sorry. I failed  
19 to turn on my mic, thank you. Do you have any  
20 objection to making the summary a part of the  
21 record of your sworn testimony today?

22 MS. ROACHE: No, sir. I do not.

23 CHAIRMAN CLEMMONS: Thank you. Does  
24 any Commission member have an objection?

25 (No response.)

1 CHAIRMAN CLEMMONS: Hearing none, so  
2 ordered.

3 [EXHIBIT NO. 11 - JUDICIAL MERIT  
4 SELECTION COMMISSION PERSONAL DATA  
5 QUESTIONNAIRE FOR RITA J. ROACHE, DATED  
6 AUGUST 9TH, 2015, ADMITTED.]

7 CHAIRMAN CLEMMONS: Ms. Roache, the  
8 Judicial Merit Selection Commission has  
9 thoroughly investigated your qualifications  
10 for the bench. Our inquiry has focused on  
11 nine statutory evaluative criteria and has  
12 also included a ballot box survey, a thorough  
13 study of your application materials,  
14 verification of your compliance with state  
15 ethics laws, a search of newspaper articles in  
16 which your name appears, a study of previous  
17 screenings, and a check for economic conflicts  
18 of interest. I am pleased to report that we  
19 have no affidavits filed in opposition to your  
20 election and there are no witnesses present to  
21 testify. Do you have a brief opening  
22 statement that you'd like to share with the  
23 Commission?

24 MS. ROACHE: I do not. I did not prepare  
25 one. Since I'm a lawyer, I can always --

1 CHAIRMAN CLEMMONS: You get no points  
2 against you for not having an opening  
3 statement for us.

4 MS. ROACHE: And you're behind. I don't  
5 think you want me to elaborate.

6 CHAIRMAN CLEMMONS: Most gracious of you.  
7 Your graciousness is noted for the record.  
8 Ms. Roache, I would ask now that you turn your  
9 attention to your screening attorney, Mr.  
10 Goldin. Please respond to any questions he  
11 may have for you.

12 MS. ROACHE: Yes.

13 MR. GOLDIN: Good afternoon.

14 EXAMINATION

15 (By Mr. Goldin)

16 **Q. Ms. Roache, please state for the record the city  
17 and circuit in which you reside.**

18 A. I live in Mount Pleasant, South Carolina, which is  
19 a part of the Ninth Judicial Circuit.

20 MR. GOLDIN: I just want to note for the  
21 record that based on that testimony and your  
22 PDQ, which is part of the record, that you  
23 meet the statutory requirements for this  
24 position regarding age, residence, and years  
25 of practice.

1     **Q.   Ms. Roache, why do you now want to serve as a**  
2     **Family Court judge?**

3     A.   I believe that being a Family Court judge is the  
4     highest calling for a judge.  It is the place where  
5     we see the commonplace and not so commonplace  
6     problems of the citizens of South Carolina.  I have  
7     dedicated my practice to this area and feel that I  
8     have an excellent understanding of the law and that  
9     I am empathetic, considerate, and well-versed in it  
10    and I think that I would be an addition to the  
11    bench of the Family Court, in short.

12    **Q.   Thank you.  Are there any areas, including**  
13    **subjective areas of the law that you would need to**  
14    **additionally prepare for in order to serve as a**  
15    **Family Court judge and how would you go about**  
16    **handling that preparation?**

17    A.   Well, I think the one thing that we had discussed  
18    before is that I've not done any juvenile matters  
19    in quite some time.  I've already, in preparation  
20    for the examination and this, I did review the  
21    statutes and the processes and even sat in on a  
22    juvenile hearing or two so I could become more  
23    familiar with how those are handled.

24    **Q.   Although you addressed this in your sworn**  
25    **affidavit, could you please explain to the members**

1           **of the Commission what you think is the appropriate**  
2           **demeanor for a Family Court judge?**

3       A.    I believe that a judge should be courteous and kind  
4           to all litigants.  That they should have the  
5           ability to listen carefully and not interject their  
6           feelings into it until they are called to make a  
7           ruling.  I believe that a judge is to show  
8           courtesy and respect to all litigants at all times.  
9           I also do not think that a judge is to get angry  
10          with litigants or their attorneys.  I think that  
11          they should be even tempered and well-mannered  
12          toward the persons who appear before them.

13       **Q.    Thank you.  Touching on your sworn statement,**  
14           **you've been provided with that with detailed**  
15           **answers to over 30 questions regarding judicial**  
16           **conduct, statutory qualifications, office**  
17           **administration, and temperament.  Are there**  
18           **any amendments you would like to make to that sworn**  
19           **statement we just discussed at this time?**

20       A.    There are none that I know of, sir.

21                   MR. GOLDIN:  Chairman Clemmons, I  
22           would like to ask that her sworn statement be  
23           entered in to the record.

24                   CHAIRMAN CLEMMONS:  Is there an  
25           objection?

1 (No response.)

2 CHAIRMAN CLEMMONS: Hearing none, so  
3 ordered.

4 [EXHIBIT NO. 12 - JUDICIAL MERIT  
5 SELECTION COMMISSION SWORN STATEMENT FOR RITA  
6 J. ROACHE, DATED AUGUST 10TH, 2015, ADMITTED.]

7 **Q. One other question. What suggestions would you**  
8 **offer for improving the backlog of cases on the**  
9 **docket in Family Court?**

10 A. As an attorney who practices in the Family Court, I  
11 think that our new requirement of having to  
12 complete cases in 365 days is excellent. It's not  
13 so hard to comply with sometimes, as an attorney,  
14 and the way that the litigation may pan out in  
15 cases. I cannot not necessarily think of anything  
16 else other than holding attorneys' feet to the fire  
17 about it and making certain that continuances  
18 aren't granted for no reason. But understanding  
19 that there may be circumstances and instances where  
20 litigants or their attorney may need the court to  
21 consider that they aren't able to appear. It is a  
22 problem, and a problem in Charleston, and something  
23 that I think I'd have to be more in to the job to  
24 know whether or not I had suggestions for  
25 improvement.

1 Q. Thank you. Ms. Roache, the Commission received 81  
2 ballot box surveys regarding you with 15 additional  
3 comments. Of those, only one was negative. The  
4 overwhelming majority of the other 14 were very  
5 positive and included comments that said they had  
6 not doubt that you would make an excellent Family  
7 Court judge and that you're a dedicated family law  
8 attorney who is fully immersed in the practice area  
9 of this highly sensitive and critical area of the  
10 law. One of those written comments did, however,  
11 indicate some concern and I'm just going to read it  
12 to you. It says that you lack experience in DSS  
13 matters, DJJ matters, and have no high conflict,  
14 high dollar divorce experience. I believe her lack  
15 of experience in these matters will make her catch  
16 time substantial and that it will be an  
17 unacceptable amount of time per docket load that we  
18 have here in Charleston. How do you respond to  
19 that?

20 A. Well, I will respond that it is rare that I do a  
21 juvenile matter at this point. I have done them in  
22 the past, and as I stated earlier, I've studied the  
23 statutes and the processes and sat in on some  
24 hearings in order to get more understanding of that  
25 area. It is absolutely incorrect that I've never

1 done a high dollar divorce.

2 SENATOR MALLOY: Mr. Chair?

3 CHAIRMAN CLEMMONS: Senator Malloy.

4 SENATOR MALLOY: I'd like to interject at  
5 this point in time.

6 CHAIRMAN CLEMMONS: Pardon me, sir?

7 SENATOR MALLOY: I'd like to interject at  
8 this point in time if I may, sir.

9 CHAIRMAN CLEMMONS: Yes.

10 SENATOR MALLOY: With all due respect to  
11 the complaint from the person. I realize that  
12 she deserves an opportunity to answer. I will  
13 just submit, as far as the courts are  
14 concerned in dividing things up into high  
15 dollar and low dollar, you divide one dollar  
16 the same way you divide \$100 in the Family  
17 Court system. It proportioned so, I mean,  
18 that kind of question has not come to any  
19 other litigants, to any petitioners that's  
20 before us as to who has access to doing cases.

21 Most of us are in a private practice. We  
22 take that cases that come in. So obviously, I  
23 think that for the liberty that we have before  
24 the Committee, if Ms. Roache desires to answer  
25 the question, but I don't think it's necessary

1 for this Committee, with all due respect.

2 CHAIRMAN CLEMMONS: Thank you,  
3 Senator Malloy. I appreciate your comment. I  
4 would like for counsel -- I would suggest that  
5 counsel proceed with any area that he feels  
6 appropriate unless you prefer taking this  
7 matter up in executive session.

8 SENATOR MALLOY: I just think the  
9 question is totally inappropriate. We can  
10 take it up any kind of way you want to, but  
11 someone who handles a high dollar case as  
12 opposed to a low dollar case is not a  
13 prerequisite for whether they qualify to being  
14 a judge in this state.

15 CHAIRMAN CLEMMONS: I agree, sir, and  
16 every member can take the question and  
17 response for whatever value they see  
18 appropriate if any. Thank you very much for  
19 your input. Mr. Goldin, please proceed.

20 (By Mr. Goldin)

21 **Q. Would you like to address it?**

22 A. Certainly. I don't mind addressing the question.

23 **Q. And I would like to say this is not a question,**  
24 **rather than I read a comment out of the ballot box.**

25 A. Yes, the comment. Responding to the comment, I

1 don't mind at all. I joined South Carolina Legal  
2 Services as the attorney for the Department of  
3 Justice, working with survivors of domestic  
4 violence, and in that capacity, my cases did not  
5 have to meet the income guidelines of South  
6 Carolina Legal Services and I did handle very many  
7 high dollar divorces.

8 One in particular, I mentioned in my  
9 questionnaire and the other information, and that  
10 was Gabrish versus Gabrish, where the defendant in  
11 the matter, the husband, was the owner of several  
12 Fender Menders and there was millions of dollars to  
13 be divided by the parties in that case. I did have  
14 other cases involved significant assets and  
15 significant debts, as well. So it is not true that  
16 I have not handled what the person called high  
17 dollar divorces.

18 And insofar as DSS is concerned, my case Loe  
19 #1 and #2 versus Berkeley County Department of  
20 Social Services, Mother and Father, is a reported  
21 case in the Southeastern Digest and that involved a  
22 case where the mother's children were removed after  
23 an alleged injury to a minor, one of her minor  
24 twins. Both twins were placed with separate  
25 families in the foster care system. And in one of

1 the families -- and then both of the families filed  
2 in order to adopt these children and I represented  
3 her in a five, almost six day trial of the matter.  
4 At the end of the trial, the judge decided that  
5 both children should be adopted by the respective  
6 families that they were placed with. After  
7 debating and going back and forth on a 26 page  
8 order, where I made about eight pages of objections  
9 to it, I did file a notice of appeal in the matter  
10 and the Court of Appeals found that my take on the  
11 case was correct and they did reverse the matter  
12 and remand it. The opposing attorney filed for a  
13 writ of certiorari with the Supreme Court. The  
14 Supreme Court denied that writ and my case stands  
15 as good law and something that has been cited in a  
16 number of different cases in the area of DSS  
17 actions. Especially in regard to requirement of  
18 our statute that if a child has been in foster care  
19 for 15 of the past 22 months, then the parents'  
20 rights can be terminated.

21 We showed in that matter that there could be  
22 just cause or excuse, especially for the lack of  
23 diligence on the part of the Department of Social  
24 Services. And it's been cited in several cases.  
25 So I do have experience in DSS matters, as well.

1 Q. Thank you. One other concern that we discussed was  
2 a tax lien that appeared on your record from the  
3 early 2000's. Would you like to explain that?

4 A. Yes. I was in partnership with Edward Brown many  
5 years ago and evidently after I left partnership  
6 with him in 1999, 2000, he never took my name off  
7 of the records, as far as the South Carolina Tax  
8 Commission, I believe. I had no knowledge of  
9 this lien or anything about it until Mr. Goldin and  
10 the investigator told me about it at that time.  
11 Mr. Brown satisfied all the liens and indicated  
12 that he would appear here with me today if it was  
13 thought necessary and he was told that it was not  
14 necessary, that I could certainly explain it to the  
15 Commission today.

16 Q. And there is a letter in here in your binder. It's  
17 from Mr. Brown testifying to that.

18 A. Yes, sir.

19 Q. Thank you. Some general housekeeping issues to ask  
20 you. Have you sought or received a pledge of any  
21 legislator prior to this date?

22 A. No, sir. I have not.

23 Q. Have you sought or have been offered a conditional  
24 pledge of support of any legislator pending the  
25 outcome of your screening?

1 A. No, sir. I have not.

2 Q. Have you asked any third parties to contact members  
3 of the General Assembly on your behalf?

4 A. No, sir.

5 Q. Are you aware of anyone attempting to intervene in  
6 any part of the process on your behalf?

7 A. No, sir. I am not aware of that.

8 Q. Have you contacted any members of the Commission?

9 A. No, sir. I have not.

10 Q. Do you understand that you are prohibited from  
11 seeking a pledge or commitment until 48 hours after  
12 the formal release of the Commission's report?

13 A. Yes, sir. I do understand that.

14 Q. And have you reviewed the Commission's guidelines  
15 on pledging?

16 A. Yes, I have.

17 MR. GOLDIN: I would note that the  
18 Lowcountry Citizens Committee Report Citizens  
19 Committee found Ms. Roache to be qualified in  
20 the evaluative criteria of constitutional  
21 qualifications, physical health, and mental  
22 stability and the committee found her well-  
23 qualified in the evaluative criteria of  
24 ethical fitness, professional and academic  
25 ability, character, reputation, experience,

1 and judicial temperament. I would also note  
2 for the record that any concerns raised during  
3 the investigation were incorporated into my  
4 questioning here today. Mr. Chairman, I have  
5 no further questions.

6 CHAIRMAN CLEMMONS: Thank you, Mr.  
7 Goldin. Members of the Commission, do you  
8 have questions for Ms. Roache? Yes.

9 REPRESENTATIVE BANNISTER: Ms. Roache, in  
10 your sworn statement, there was a question  
11 about recusal and it specifically said how  
12 would you handle the recusal of a lawyer  
13 legislator appearing in front of you. And  
14 your answer, if any counsel moves for recusal  
15 and has reservations regarding my ability to  
16 be fair and impartial, then I must recuse  
17 myself. Did you mean that based exclusively  
18 on the lawyer's argument that because a  
19 lawyer legislator was appearing in front of  
20 you that should recuse yourself, that you  
21 would do that or could you just explain that  
22 answer to me?

23 MS. ROACHE: I think that that is  
24 problematic, but if a lawyer were to ask for  
25 me to recuse myself in any matter where they

1 question my ability to be fair and impartial,  
2 then I would think it appropriate that I  
3 recuse myself.

4 REPRESENTATIVE BANNISTER: Thank you.

5 MS. ROACHE: I don't mean that in  
6 any case involving a lawyer legislator, I  
7 would recuse myself, but were it asked  
8 because they thought I could not be fair or  
9 impartial.

10 REPRESENTATIVE BANNISTER: So if  
11 opposing counsel makes that motion based on  
12 the fact that the other counsel is a lawyer  
13 legislator, you would grant that motion?

14 MS. ROACHE: No. I think they would have  
15 to allege more facts than that in their making  
16 of the motion. Just the bare motion, I don't  
17 know whether I would do it. It would depend  
18 on everything that was involved in the motion,  
19 sir.

20 REPRESENTATIVE BANNISTER: Okay. Thank  
21 you.

22 MS. ROACHE: Certainly.

23 CHAIRMAN CLEMMONS: Thank you,  
24 Representative Bannister. Senator from  
25 Pickens is recognized.

1                   SENATOR MARTIN: Thank you very much, Mr.  
2 Chairman. Ms. Roache, if you look around the  
3 judiciary, who would be the judge that you  
4 would most like to emulate in your demeanor  
5 and how you act as a judge?

6                   MS. ROACHE: In the Family Court, sir?

7                   SENATOR MARTIN: Yes. Well, any judge,  
8 really, that you --

9                   MS. ROACHE: I find that Judge Wayne  
10 Creech in Berkeley County has a very wonderful  
11 demeanor and treats all parties with  
12 dignity and respect and I would seek to be  
13 like he is.

14                  SENATOR MARTIN: Thank you very much.

15                  CHAIRMAN CLEMMONS: Thank you, Senator.  
16 Other questions? Chair recognizes  
17 Representative Mack.

18                  REPRESENTATIVE MACK: Thank you, Mr.  
19 Chairman. Great to see you. Ms. Roache, just  
20 wanted to let the committee know that our  
21 families go back a long way. She's from an  
22 incredible family of leaders and integrity.  
23 She's been able to carve out her own legacy  
24 with regard to the law. So I just wanted to  
25 put that on the record and it's good to see

1           you going after this.

2                   I did have one question.  Something that  
3           was written in terms of you, I guess, caring  
4           too much for the poor and too much, I guess,  
5           for blacks and minorities and, you know, of  
6           course, being an African American legislator,  
7           I get that sometimes.  What I tell folks is  
8           having empathy means that -- for example, I  
9           couldn't help just black folk even if I wanted  
10          to, but how would you respond to that?  
11          Obviously, people in a small minority making a  
12          point that, okay, you're an African American  
13          and maybe you'll lean too much toward African  
14          Americans and the poor.

15                   MS. ROACHE:  I would say that as an  
16          advocate, I am a very zealous representative  
17          for my clients.  I think that once you are a  
18          member of the bench, you are no longer an  
19          advocate.  It is your job to apply the law to  
20          the set of facts that are before you and I  
21          don't think that because I've been a legal  
22          services attorney and have represented persons  
23          who can't afford attorneys or are poor would  
24          make me ignore the law since I have empathy  
25          and concern for them.  My job would be to

1 even-handedly apply the law to every set of  
2 facts, no matter who the litigants would be.

3 REPRESENTATIVE MACK: And that's not  
4 unusual because we've had many people over the  
5 years and you being in law and know judges  
6 that have served as both prosecutors and  
7 defendants and you have to wear different  
8 hats, --

9 MS. ROACHE: Yes.

10 REPRESENTATIVE MACK: -- but the bottom  
11 line is knowing the law.

12 MS. ROACHE: Yes, sir.

13 REPRESENTATIVE MACK: Thank you.

14 MS. ROACHE: Thank you.

15 SENATOR MALLOY: Mr. Chairman.

16 CHAIRMAN CLEMMONS: Yes. Senator Malloy  
17 is recognized.

18 SENATOR MALLOY: Thank you. I have not  
19 been able to check, but I think maybe back in  
20 my early days, Ms. Roache may have contributed  
21 to my campaign. She may be able to verify  
22 that or not, but I think so.

23 MS. ROACHE: And I think so, as well,  
24 but I'm sorry, I don't remember when. It's  
25 been quite some time ago.

1                   SENATOR MALLOY: I want to note that  
2                   that's a possibility. I have worked a lot  
3                   with alternative sentencing matters as it  
4                   relates to drug court. Do you support those  
5                   matters as it relates to keeping children from  
6                   behind the wire?

7                   MS. ROACHE: Yes, I do.

8                   SENATOR MALLOY: And if elected, would  
9                   you be a willing participate in such programs?

10                  MS. ROACHE: Yes, I would.

11                  SENATOR MALLOY: Okay. The other thing I  
12                  see a lot of times, depending on which  
13                  jurisdiction you go in, as to whether or not a  
14                  judge lets litigants argue at temporary  
15                  hearings or whether they just submit  
16                  affidavits in some courts. And in some  
17                  courts, they let them prepare affidavits plus  
18                  argue. What's your general position as a  
19                  judge? What do you think that would be?

20                  MS. ROACHE: I think that the Family  
21                  Court rules should be followed. They say that  
22                  temporary hearings are conducted by affidavits  
23                  and arguments of counsel or litigants if they  
24                  do not have counsel. I think that that is how  
25                  a temporary hearing should be conducted, both

1 with the submission of the affidavits and  
2 the arguments from either the party or their  
3 attorney.

4 SENATOR MALLOY: Okay. Do you  
5 participate in the mediation process now as an  
6 attorney?

7 MS. ROACHE: Yes, sir. It's mandatory in  
8 Charleston County.

9 SENATOR MALLOY: And are you certified as  
10 a mediator?

11 MS. ROACHE: I am not certified as a  
12 mediator. I do have a certification from  
13 the National Association of Securities Dealers  
14 as an arbitrator, which I do those sometimes.

15 SENATOR MALLOY: And have you  
16 participated in your career as a guardian ad  
17 litem or support or in representation of  
18 guardians ad litem?

19 MS. ROACHE: Yes. I have been a guardian  
20 ad litem. It is not something that I can do  
21 at this time, being employed by South Carolina  
22 Legal Services, but I did a great deal of  
23 guardian work in private practice.

24 SENATOR MALLOY: And I just have to just  
25 address the issue that I raised just a

1 moment ago. I just wanted to make certain  
2 that you understand and the Committee because  
3 I know it catches the applicant by a little  
4 bit of surprise by implication of that  
5 question. I just wanted to make certain  
6 that it was a fair question as to high  
7 dollar cases and I didn't quite get the gist  
8 of it. I just wanted to end up knowing that,  
9 that I'm concerned about your knowledge  
10 overall and that you've had the opportunity to  
11 be able to participate in family court in  
12 almost every arena, correct?

13 MS. ROACHE: Yes, sir. I have.

14 SENATOR MALLOY: You've been in private  
15 practice?

16 MS. ROACHE: Yes, sir.

17 SENATOR MALLOY: And so in  
18 private practice, you did matters as it  
19 relates to equitable distribution?

20 MS. ROACHE: Yes, sir.

21 SENATOR MALLOY: Okay. And did you try  
22 cases as it relates to the division of  
23 property?

24 MS. ROACHE: Yes, sir. I did.

25 SENATOR MALLOY: Okay. And obviously, as

1 it relates to child custody and those types of  
2 issues?

3 MS. ROACHE: Yes, sir.

4 SENATOR MALLOY: Okay. That's all the  
5 questions I have.

6 MS. ROACHE: Thank you.

7 CHAIRMAN CLEMMONS: Thank you, Senator  
8 Malloy. Other questions?

9 (No response.)

10 CHAIRMAN CLEMMONS: Hearing none. Ms.  
11 Roache, thank you so much for offering for  
12 this court.

13 MS. ROACHE: Thank you very much.  
14 Thank all of you very much.

15 CHAIRMAN CLEMMONS: Bear with me just  
16 one moment while I close out this portion of  
17 the record. That will conclude this portion  
18 of the screening process. As you know, Ms.  
19 Roache, the record will remain open until the  
20 report is published and you may be called back  
21 at such a time if that need should arise. We  
22 remind you of the 48-hour rule and would ask  
23 that if anybody should inquire as to whether  
24 or not they may advocate with any member of  
25 the General Assembly on your behalf that you

1 remind them or educate them with regard to the  
2 48-hour rule. With that, we all would like to  
3 jointly thank you for offering for this  
4 position and we appreciate your desire to be  
5 of service to the state of South Carolina.  
6 Thank you very much.

7 MS. ROACHE: Thank you, sir. Thank you  
8 all.

9 CHAIRMAN CLEMMONS: Have a wonderful day.

10 MS. ROACHE: You, as well.

11 SENATOR MALLOY: Mr. Chairman.

12 CHAIRMAN CLEMMONS: Oh, I'm sorry. I  
13 believe you might have a guest with you today  
14 that hasn't been introduced. Do you or do you  
15 not?

16 MS. ROACHE: No, sir. I don't, not  
17 today.

18 CHAIRMAN CLEMMONS: Okay. Thank you.

19 SENATOR MALLOY: Mr. Chairman.

20 CHAIRMAN CLEMMONS: Yes, sir.

21 SENATOR MALLOY: I have someone I'd like  
22 to introduce --

23 CHAIRMAN CLEMMONS: Certainly.

24 SENATOR MALLOY: -- before Ms. Roache is  
25 excused. We have a new Senator-elect from

1 Jasper, Colleton, Beaufort, Charleston, and  
2 other counties. Margie Bright Matthews is  
3 in the audience and came over to end up  
4 spending some time with us. Meet Senator  
5 Matthews.

6 CHAIRMAN CLEMMONS: Well, congratulations  
7 on your election win, Senator, and it's a  
8 pleasure to have you with us.

9 SENATOR MATTHEWS: Thank you. Good  
10 afternoon.

11 CHAIRMAN CLEMMONS: Thank you again, Ms.  
12 Roache.

13 MS. ROACHE: Thank you very much.

14 (The candidate is excused.)

15 CHAIRMAN CLEMMONS: I'd like to note that  
16 we are going into executive session for the  
17 purpose of discussing qualification issues. I  
18 ask that any non-member of the Commission or  
19 non-staff member, if you would excuse us,  
20 please, as we go into executive session and we  
21 would ask security if you would please secure  
22 the doors.

23 (Off-the-record executive session.)

24 CHAIRMAN CLEMMONS: Do we have a motion  
25 to find all the candidates qualified?

1 REPRESENTATIVE MACK: So moved.

2 CHAIRMAN CLEMMONS: Thank you. I have  
3 multiple motions to do so.

4 SENATOR MALLOY: Second.

5 CHAIRMAN CLEMMONS: And we have a second  
6 by Senator Malloy. All those in favor, say  
7 aye.

8 (Commission members audibly say "aye".)

9 CHAIRMAN CLEMMONS: Opposed?

10 (No response.)

11 CHAIRMAN CLEMMONS: It's unanimous. The  
12 ayes have it. All candidates are qualified.  
13 Now we move to nomination. Each member of the  
14 Commission has up to three votes. The first  
15 candidate to receive six or more will be  
16 considered nominated. After that, if there is  
17 a tie, then we'll have to go to a second  
18 ballot. If more than three receives six  
19 votes, then we go to the highest vote. All  
20 right. Are we ready? We're preparing to vote  
21 for nominees. The first candidate, the  
22 Honorable John Lawrence Duffy. If you wish to  
23 find the Honorable John Lawrence Duffy  
24 nominated, please raise your hand.

25 (The Commission members vote.)

1                   CHAIRMAN CLEMMONS: Spiros Stavros  
2                   Ferderigos.

3                   (The Commission members vote.)

4                   CHAIRMAN CLEMMONS: Okay, Spiros  
5                   Stavros Ferderigos has been qualified and  
6                   nominated. Michele Patrao Forsythe.

7                   (The Commission members vote.)

8                   CHAIRMAN CLEMMONS: Michele Patrao  
9                   Forsythe is found nominated. Sean Keefer.

10                  (The Commission members vote.)

11                  CHAIRMAN CLEMMONS: Rita Roache.

12                  (The Commission members vote.)

13                  CHAIRMAN CLEMMONS: All right. We'll go  
14                  to a second round amongst the three  
15                  candidates: Duffy, Keefer, and Roache.

16                  DEAN WILCOX: How many did Judge Duffy  
17                  have in the first round?

18                  CHAIRMAN CLEMMONS: Four.

19                  DEAN WILCOX: It was four, three and  
20                  three?

21                  CHAIRMAN CLEMMONS: It's four votes.  
22                  This round ended with four votes for Duffy,  
23                  three votes for Keefer, and three votes for  
24                  Roache. Let's see how we do on the second  
25                  round then we may want to go to some

1 discussion. All right. Votes for Duffy.

2 (The Commission members vote.)

3 CHAIRMAN CLEMMONS: Keefer.

4 (The Commission members vote.)

5 CHAIRMAN CLEMMONS: And Roache.

6 (The Commission members vote.)

7 CHAIRMAN CLEMMONS: All right. The  
8 Honorable John Lawrence Duffy is found  
9 nominated. Strike that. He did not reach six  
10 votes. Strike that. So we will go to another  
11 round. Do any members wish to address any  
12 particular candidate? Ms. Wall.

13 MS. WALL: I move to --

14 REPRESENTATIVE BANNISTER: On the record  
15 or executive session?

16 MS. WALL: I was going to move to  
17 executive session.

18 CHAIRMAN CLEMMONS: Is there a desire to  
19 go to executive session to discuss  
20 qualifications?

21 MS. WALL: Yes. I move to go into  
22 executive session to discuss qualifications  
23 among the three candidates.

24 CHAIRMAN CLEMMONS: Ms. Wall, so moved,  
25 so ordered. If security would please secure

1 the doors.

2 (Off-the-record executive session.)

3 CHAIRMAN CLEMMONS: Back on the record.

4 And we will move directly into the third round  
5 of ballots. Thank you. For the record,  
6 having risen from executive session, no votes  
7 were taken or decisions made. We solely  
8 discussed qualifications of candidates. All  
9 right. Moving on, we're ready to go to  
10 ballot. Again, each member of the Commission  
11 has one vote and we're voting between three  
12 members, John Duffy, Sean Keefer, and Rita  
13 Roache. All those in favor of the  
14 Honorable John Lawrence Duffy, raise your  
15 hand.

16 (The Commission members vote.)

17 CHAIRMAN CLEMMONS: Got one. Sean  
18 Keefer, raise your hand.

19 (The Commission members vote.)

20 CHAIRMAN CLEMMONS: Rita Roache, raise  
21 your hand.

22 (The Commission members vote.)

23 CHAIRMAN CLEMMONS: Rita Roache, having  
24 reached the threshold of no less than six  
25 votes, is found to be the third nominated

1 candidate for Family Court, Ninth Judicial  
2 Circuit, Seat 3. The three complete list is  
3 Spiros Stavros Ferderigos, Michele Patrao  
4 Forsythe, and Rita J. Roache. Now, we move  
5 into candidates for Family Court, Ninth  
6 Circuit, Seat 3.

7 DEAN WILCOX: Eighth Circuit seat.

8 CHAIRMAN CLEMMONS: Thank you very much,  
9 Dean. That was an incorrect lead-in.

10 MS. WALL: I'd like to move into  
11 executive session.

12 CHAIRMAN CLEMMONS: We have a motion to  
13 go into executive session. So ordered.

14 MS. WALL: For legal advice.

15 CHAIRMAN CLEMMONS: For legal advice. We  
16 would ask security to secure the room.

17 (Off-the-record executive decision.)

18 CHAIRMAN CLEMMONS: We are back on the  
19 record. The Commission receded into executive  
20 session for the purpose of discussing legal  
21 matters and we have now exited executive  
22 session. We did not make any decisions or  
23 cast any votes and now we have before us the  
24 Honorable John M. Rucker. Judge Rucker, it's  
25 good to have you with us today. Thank you for

1 joining us.

2 JUDGE RUCKER: It's good to be here.

3 CHAIRMAN CLEMMONS: Thank you. Would you  
4 please raise your right hand and be sworn in?

5 (The judge is sworn in.)

6 CHAIRMAN CLEMMONS: Thank you, Judge.  
7 Judge, have you had an opportunity to review  
8 your personal data questionnaire?

9 JUDGE RUCKER: Yes. Not today, but yes.

10 CHAIRMAN CLEMMONS: Is it complete and  
11 correct?

12 JUDGE RUCKER: Yes, sir. The one that I  
13 turned in is correct.

14 CHAIRMAN CLEMMONS: All right, sir. Is  
15 there any need for any change or amendment to  
16 that personal data questionnaire today?

17 JUDGE RUCKER: No, sir.

18 CHAIRMAN CLEMMONS: Thank you very much.  
19 Would you have any objection to your  
20 personal data questionnaire being included in  
21 the record of your sworn testimony today?

22 JUDGE RUCKER: None at all.

23 CHAIRMAN CLEMMONS: Thank you very much.  
24 Is there any objection by Commission members?

25 (No response.)

1                   CHAIRMAN CLEMMONS: Hearing none, it's so  
2 ordered.

3                   [EXHIBIT NO. 13 - JUDICIAL MERIT  
4 SELECTION COMMISSION PERSONAL DATA  
5 QUESTIONNAIRE FOR THE HONORABLE JOHN M.  
6 RUCKER, DATED JULY 31ST, 2015, ADMITTED.]

7                   CHAIRMAN CLEMMONS: Judge, the Judicial  
8 Merit Selection Commission has thoroughly  
9 investigated your qualifications for the  
10 bench. Our inquiry is based upon the  
11 statutory nine evaluative criteria and it also  
12 has included a ballot box survey, a thorough  
13 study of the materials that you've provided  
14 in the application process, a verification of  
15 your compliance with state ethics laws, a  
16 search of newspaper articles in which your  
17 name appears, a study of previous screenings,  
18 and a check for economic conflicts of  
19 interest. I'm pleased to report that we have  
20 received no affidavits filed in opposition to  
21 your election and there are no witnesses  
22 present to testify. Do you have a brief  
23 opening statement you'd like to share with us?

24                   JUDGE RUCKER: Not really other than I  
25 have, of course, been a judge since 1988 and I

1 have thoroughly enjoyed the service. I've  
2 enjoyed this year, dealing with the Bar,  
3 dealing with the Citizen's Committee. It's  
4 been nice and I hope it continues today. I  
5 enjoy serving as a judge. At times, it can be  
6 quite stressful, but also at times, it can be  
7 quite rewarding and I have enjoyed my service  
8 through the years.

9 CHAIRMAN CLEMMONS: Thank you. We  
10 acknowledge your service. We are very  
11 grateful for it.

12 JUDGE RUCKER: Thank you.

13 CHAIRMAN CLEMMONS: Thank you, Judge. I  
14 would like for you to now turn your attention  
15 to your screening attorney and if you would,  
16 please answer any questions that she may have  
17 for you.

18 MS. ANDERSON: Good afternoon, Judge  
19 Rucker.

20 JUDGE RUCKER: Good afternoon.

21 MS. ANDERSON: Mr. Chairman and members  
22 of the Commission, I have a procedural matter  
23 to take care of with this candidate.

24 EXAMINATION

25 (By Ms. Anderson)

1     **Q.     Judge Rucker, you have before you the sworn**  
2     **statement you provided with detailed answers to**  
3     **over 30 questions regarding judicial conduct,**  
4     **statutory qualifications, office administration and**  
5     **temperament. Are there any amendments you would**  
6     **like to make at this time to your sworn statement?**

7     A.    Oh, no, ma'am. No, ma'am.

8                   MS. ANDERSON: At this time, Mr.  
9                   Chairman, I would like to ask that Judge  
10                  Rucker's sworn statement be entered as an  
11                  exhibit into the hearing record.

12                 CHAIRMAN CLEMMONS: Is there any  
13                  objection?

14                         (No response.)

15                 CHAIRMAN CLEMMONS: Hearing none, so  
16                  ordered.

17                         [EXHIBIT NO. 14 - JUDICIAL MERIT  
18                         SELECTION COMMISSION SWORN STATEMENT FOR THE  
19                         HONORABLE JOHN M. RUCKER, DATED JULY 31ST,  
20                         2015, ADMITTED.]

21     **Q.     Judge Rucker, after serving 27 years on the Family**  
22     **Court, why do you want to continue service on the**  
23     **court?**

24     A.    I enjoy it. As I said in my opening statement,  
25     that while at times it can be probably the worse

1 position a person could ever be in, but the  
2 majority of the time, it is rewarding to be able to  
3 help people through problems. I've enjoyed it and,  
4 you know, I hope to continue it. You know, I --  
5 gosh, I don't know. I've seen changes through the  
6 years. The Family Court is getting better. One  
7 thing and I'm going to say this to the people that  
8 are in the General Assembly, thank goodness for the  
9 extra judges. It helped us tremendously and the  
10 next thing that helped is mediation. Those are the  
11 two greatest things that have happened in the last  
12 few years. But you know, it is an enjoyable  
13 occupation and rewarding. That's why I want to  
14 continue.

15 **Q. Judge Rucker, please explain one or two brief**  
16 **accomplishments that you feel you have completed**  
17 **during your tenure and then a goal that you would**  
18 **like to accomplish if re-elected.**

19 A. What I've accomplished on the Family Court?

20 **Q. Yes, sir.**

21 A. Oh, gosh. I guess, I've made it though 27 years  
22 and as far as I know, no one's been hurt anywhere.  
23 You know, the accomplishments are small, but  
24 incremental. The things you do with people with  
25 children, you know, we have developed some things

1 through the years that, you know, are working with  
2 children. The guardian program -- see, that's how  
3 far I go back. The guardian program in DSS cases  
4 is wonderful. I guess seeing families, even after  
5 divorce, still get along is probably one of the  
6 greatest accomplishments and that is not me.  
7 That's mediation doing that. To keep people from  
8 having to go at each other tooth and toenail, or  
9 whatever phrase you want to use, for them to sit  
10 down and work things out and come in in front of  
11 the court and the court to approve it, they don't  
12 have that lasting animosity. And that's one of the  
13 things I, you know, I can't really take credit for  
14 that, but it's a joy to see it happen and it didn't  
15 happen when I first started. Everything that  
16 people couldn't agree, we tried it. Now, what was  
17 the second part of your question?

18 **Q. Is there a goal that you would like to accomplish?**

19 A. Goal. Well, I guess my goal is for everybody to  
20 leave the courtroom happy. Am I going to  
21 accomplish that? Uh-uh. That is not going to  
22 happen. But to try to keep people peaceful in the  
23 courtroom, to try to keep people living their life  
24 after they leave the courtroom in a proper  
25 perspective, to try not to add to the -- oh gosh,

1           what would be the word -- to add to the problems  
2           that people have. I believe that you try to keep  
3           people calm in a courtroom, that, of course, you  
4           treat them respectfully, and you try to make sure  
5           they understand what is happening.

6           We're facing this with pro se now, self-  
7           represented litigants. A lot of times, they don't  
8           understand the legal processes and you have to  
9           spend a little time explaining why you do things,  
10          but then you have to be real careful of not getting  
11          in a position that you're somebody's lawyer. I  
12          mean, it's tough, but you try to keep people  
13          informed of what's going on. I guess that's my  
14          goal. Took a minute and a whole lot of words to  
15          say that, but I guess that's my goal.

16       **Q. Judge Rucker, although you addressed this in your**  
17       **sworn affidavit, could you please explain to the**  
18       **members of the Commission what you think is the**  
19       **appropriate demeanor for a judge?**

20       A. Calm. A judge needs to be calm. A judge needs to  
21       work hard to make litigants and attorneys feel  
22       comfortable in the courtroom so that they can get  
23       their side out. We need to have patience. And oh  
24       my goodness, there are times your patience gets  
25       tried, but you need to keep a calm demeanor,

1 patient with people, and move through the case and  
2 let everybody get out what they need to say to  
3 prove their case.

4 **Q. Judge Rucker, the Commission received 186 ballot**  
5 **box surveys regarding you, with 20 additional**  
6 **comments. The ballot box survey, for example,**  
7 **contained some of the following positive comments:**  
8 **fine Family Court judge, one of our best, he's**  
9 **done a wonderful job for many years, he listens**  
10 **closely to litigants and works to try to resolve**  
11 **cases in the best way possible, I tried a**  
12 **particularly difficult custody case that I lost and**  
13 **yet I can still say that he was very even-handed to**  
14 **both parties and gave the litigants respect and the**  
15 **lawyers respect and he rendered a fair decision, he**  
16 **is always professional. None of the written**  
17 **comments expressed any concerns.**

18 A. That was very kind, very kind.

19 REPRESENTATIVE BANNISTER: And highly  
20 unusual.

21 JUDGE RUCKER: It's just about bringing  
22 me to tears.

23 (By Ms. Anderson)

24 **Q. I have a few housekeeping issues.**

25 A. Okay.

1 Q. Have you sought or received the pledge of any  
2 legislator prior to this date?

3 A. No, ma'am.

4 Q. Have you sought or have you been offered a  
5 conditional pledge of support of any legislator  
6 pending the outcome of your screening?

7 A. No, ma'am.

8 Q. Have you asked any third parties to contact members  
9 of the General Assembly on your behalf?

10 A. No, ma'am.

11 Q. Are you aware of anyone attempting to intervene in  
12 any part of this process on your behalf?

13 A. No, ma'am.

14 Q. Have you contacted any members of the Commission?

15 A. No, ma'am.

16 Q. Do you understand that you are prohibited from  
17 seeking a pledge or commitment until 48 hours after  
18 the formal release of the Commission's report?

19 A. Yes, ma'am.

20 Q. Have you reviewed the Commission's guidelines on  
21 pledging?

22 A. Yes.

23 Q. And as a follow-up, are you aware of the penalties  
24 for violating the pledging rules, that is, it is a  
25 misdemeanor and upon conviction, the violator must

1           **be fined not more than \$1,000 or imprisoned not**  
2           **more than 90 days?**

3           A.    Yes, I am.

4           **Q.    Thank you, Judge Rucker.**

5                       MS. ANDERSON:  I would note that the  
6                       Piedmont Citizens Committee reported that  
7                       Judge Rucker is qualified as to constitutional  
8                       qualifications, physical health, and  
9                       mental stability and well-qualified as to  
10                      ethical fitness, professional and academic  
11                      ability, character, reputation, experience,  
12                      and judicial temperament.  The committee  
13                      stated in summary, from our interview and the  
14                      comments of others, it is clear that Judge  
15                      Rucker is a thoughtful jurist with both a  
16                      good sense of humor and a good common sense.  
17                      His many years of experience on the bench and  
18                      his practical, sensible approach to  
19                      solving complicated domestic problems are a  
20                      credit to your judiciary.  We believe that he  
21                      continues to be an outstanding judge.  I would  
22                      --

23                      SENATOR MARTIN:  Mr. Chairman.  Oh, I'm  
24                      sorry.

25                      MS. ANDERSON:  I was just going to note

1 for the record that any concerns raised during  
2 the investigation regarding Judge Rucker were  
3 incorporated in the questioning today. Mr.  
4 Chairman, I have no further questions.

5 CHAIRMAN CLEMMONS: Thank you. Senator  
6 Martin is recognized.

7 SENATOR MARTIN: Thank you, Mr. Chairman  
8 and members of the Commission. Judge, it's  
9 good to see you. Welcome.

10 JUDGE RUCKER: Good to see you. Good to  
11 be here.

12 SENATOR MARTIN: In full disclosure to  
13 the Commission, I served with Judge Rucker, I  
14 guess, for about nine years.

15 JUDGE RUCKER: Well, we go back to the  
16 point where you were sitting beside Sol Blatt.

17 SENATOR MARTIN: That's exactly right  
18 and, you know, I just can't tell y'all how  
19 much I enjoyed serving with Judge Rucker, a  
20 very, very fine member of the House, is one of  
21 those judges that, you know, having served  
22 this number of years, has clearly acquitted  
23 himself as a judge in the manner in which we  
24 find him today with these, I think, just  
25 extremely excellent comments. Judge Rucker,

1 did you know that often times we don't get  
2 these kind of comments about a judge, but  
3 you're very much a rarity in that regard.

4 JUDGE RUCKER: I guess I'll let out a  
5 sigh of relief on that.

6 SENATOR MARTIN: I'm serious. A lot of  
7 times, we're not just blowing smoke. We do  
8 some of that sometimes, but, you know,  
9 gracious comments, particularly from  
10 politicians, but I will tell you that demeanor  
11 of a judge is something that I've talked about  
12 a good bit because I care a great deal about  
13 that and I just can't tell you how proud I am  
14 of the outstanding comments that I fully  
15 expected that you would receive.

16 JUDGE RUCKER: You know, the hardest  
17 thing, I guess, in being a judge is to make  
18 sure that people perceive what's going on as  
19 being fair. That is difficult. You know,  
20 especially, and I hate to go back to this pro  
21 se, but that's a problem we've got and I  
22 really don't know how we're going to ever  
23 solve it. I mean, they've got a right to be  
24 there. They give out packages to them, but a  
25 lot of them come in and don't read the

1 packages.

2 SENATOR MARTIN: Right. Refresh my  
3 memory. Did you get elected in '74?

4 JUDGE RUCKER: Did I get elected to --

5 SENATOR MARTIN: The House.

6 JUDGE RUCKER: -- the House? No. I got  
7 elected in '76.

8 SENATOR MARTIN: '76?

9 JUDGE RUCKER: Uh-huh.

10 SENATOR MARTIN: Then you were two years  
11 ahead of me. I was thinking you came in that  
12 big class of '74.

13 JUDGE RUCKER: No. I ran in '74, but I  
14 didn't make it in '74. I came two years  
15 later, but I got further training, I guess.

16 SENATOR MARTIN: I have very, very fond  
17 memories of having served with you and, you  
18 know, all those folks back then would be very  
19 proud.

20 JUDGE RUCKER: I've been sitting back  
21 here in this room back here at the back and  
22 walking around and looking at the pictures of  
23 the Rules Committee. You know, we've grown a  
24 little older. There's several of them on  
25 there that I had trouble remembering how they

1 looked back then.

2 SENATOR MARTIN: That's why we don't have  
3 a mirror in that room. Well, let me tell you,  
4 you remember that picture -- the first picture  
5 I have of the House Chamber is a picture of  
6 when Raymond Schwartz was Speaker. I didn't  
7 get one of Speaker Carter and, of course, we  
8 served under him and I've got that one at my  
9 house. That's the only picture in my little  
10 study. And that picture, when you look at it,  
11 you look at the members. Of course, you're in  
12 that picture. You look at the members from  
13 1980 and that picture, I bet you, oh, probably  
14 half of them have passed on.

15 JUDGE RUCKER: Yes. That's the scary  
16 part. Have you got a copy, and I know I'm  
17 taking time and I shouldn't do this. There's  
18 the Tuesday night at the Capitol. Have you  
19 got that picture?

20 SENATOR MARTIN: Yes, I do. I do.

21 JUDGE RUCKER: I don't know if y'all --  
22 of course, everybody in here's young except  
23 for a couple of them, but you can recognize  
24 people around and it is really amazing. I've  
25 got it hanging in the den and I'll go and look

1 at it at times to remember. It was fun. It  
2 was an enjoyable experience, a worthwhile  
3 experience and then I look at, oh gosh,  
4 Ed Saleeby is in there, Jim Arthur from Union,  
5 I mean, they're just all around. It was neat.

6 SENATOR MARTIN: Thank you.

7 SENATOR MALLOY: Mr. Chairman, briefly.

8 CHAIRMAN CLEMMONS: Senator Malloy.

9 SENATOR MALLOY: Briefly, I'd just like  
10 to say that I've had a chance to appear in  
11 front of Judge Rucker and have done so  
12 recently. And I speak at his conference every  
13 year for at least the last decade, I would  
14 think, for the Family Court judges and I will  
15 say that our state has been well-served by  
16 Judge Rucker's tenure.

17 JUDGE RUCKER: Thank you.

18 CHAIRMAN CLEMMONS: Thank you, Senator  
19 Malloy. Mr. Bannister, you'd like to add  
20 praise.

21 MR. BANNISTER: Apparently, everyone who  
22 would appear in front of you would say the  
23 same thing and that's -- I know we were just  
24 kind of joking around with you not having  
25 negative comments. There aren't any other

1 ballot box surveys without an anonymous  
2 negative comment that I can find. Of all the  
3 judges we're screening through the rest of the  
4 week, every one of them has got somebody who  
5 said something ugly because it's anonymous,  
6 except for you. So kudos, kudos.

7 DEAN WILCOX: You're clearly too soft.

8 CHAIRMAN CLEMMONS: Let the record  
9 reflect that the judge is blushing.

10 MR. HITCHCOCK: Judge, I'm a dirt  
11 lawyer and I've never appeared before you and  
12 I like your hairstyle.

13 JUDGE RUCKER: I've found that it does  
14 help you in the morning to get moving a lot  
15 quicker that way.

16 CHAIRMAN CLEMMONS: Thank you. Are there  
17 any serious questions?

18 SENATOR MALLOY: Those are serious  
19 comments.

20 CHAIRMAN CLEMMONS: Those are serious  
21 comments. We truly do thank you for your  
22 years of service, Judge.

23 JUDGE RUCKER: Thank y'all. Thank y'all  
24 very much.

25 CHAIRMAN CLEMMONS: And thank you for

1 offering again.

2 JUDGE RUCKER: This is humbling. I mean,  
3 I don't know, but we've got a lot of good  
4 judges in this state. We've got an awful lot  
5 of good judges in this state and I think we're  
6 lucky and I appreciate the job y'all do and  
7 thank you.

8 CHAIRMAN CLEMMONS: Likewise. Thank you,  
9 Judge Rucker. I have just a couple of  
10 comments here to close out the record.

11 JUDGE RUCKER: Okay.

12 CHAIRMAN CLEMMONS: That will conclude  
13 this portion of our screening process. As you  
14 know, Judge, the record will remain open until  
15 the report is published. You may be called  
16 back at such time if that need should arise.  
17 We will remind you of the 48-hour rule and  
18 ask you to be mindful of it. And to remind  
19 anyone that may ask about advocating upon your  
20 behalf with the General Assembly that you  
21 remind them or instruct them on the 48-hour  
22 rule. With that, we thank you for serving and  
23 offering again to serve the state of South  
24 Carolina.

25 JUDGE RUCKER: Thank y'all. Thank you.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(The judge is excused.)

CHAIRMAN CLEMMONS: Motion to move into executive session has been made by Senator Malloy and such is now ordered. Security, will you please secure the room.

(Off-the-record executive session.)

CHAIRMAN CLEMMONS: We're back on the record. If we could, please open the doors. We are receding from executive session after having received clarification on legal matters by counsel. No votes were taken. No decision were made. Do we have a motion to find Judge Rucker qualified and nominated?

SENATOR MALLOY: I so move.

CHAIRMAN CLEMMONS: So moved by Senator Malloy and is there a second?

MR. HITCHCOCK: Second.

CHAIRMAN CLEMMONS: Second by Mr. Hitchcock. All those in favor say aye.

(Commission members audibly say "aye.")

CHAIRMAN CLEMMONS: Are there any opposed?

(No response.)

CHAIRMAN CLEMMONS: By acclamation, the Honorable John M. Rucker has been qualified

1 and nominated. Moving along, we have Steven  
2 Coleman Kirven. He is now the only candidate  
3 vying for the seat that he currently holds as  
4 Master-in-Equity for Anderson and Oconee  
5 County, Tenth Circuit. I'm sorry. He is not  
6 the incumbent. There is no incumbent. It's  
7 an open seat.

8 MS. WALL: May we take a five minute  
9 break?

10 CHAIRMAN CLEMMONS: We may. Yes.

11 MS. WALL: We're ten minutes early, so.

12 CHAIRMAN CLEMMONS: A five minute break  
13 is requested and granted. We will come back  
14 on the record in five minutes.

15 (Off the record.)

16 CHAIRMAN CLEMMONS: We're going back on  
17 the record. If we could have our next  
18 candidate, please. Good afternoon, Mr.  
19 Kirven.

20 MR. KIRVEN: Good afternoon.

21 CHAIRMAN CLEMMONS: Good to have you with  
22 us today.

23 MR. KIRVEN: Thank you.

24 CHAIRMAN CLEMMONS: If you would, sir,  
25 would you please raise your right hand to be

1 sworn?

2 (The candidate is sworn in.)

3 CHAIRMAN CLEMMONS: Thank you very much,  
4 sir. Have you had an opportunity to review  
5 your personal data questionnaire?

6 MR. KIRVEN: Yes.

7 CHAIRMAN CLEMMONS: Is it complete and  
8 correct?

9 MR. KIRVEN: Yes.

10 CHAIRMAN CLEMMONS: Is there any need to  
11 make any changes or amendments at this time?

12 MR. KIRVEN: The only thing I can think  
13 of is I spent probably another five or six  
14 dollars in postage since this was done.

15 CHAIRMAN CLEMMONS: With that oral  
16 amendment, would you have any objection to  
17 including that personal data questionnaire in  
18 the record as a part of your sworn testimony  
19 today?

20 MR. KIRVEN: No, sir.

21 CHAIRMAN CLEMMONS: Thank you very much.  
22 Is there an objection by any Commission  
23 member?

24 (No response.)

25 CHAIRMAN CLEMMONS: Hearing none, so

1 ordered.

2 [EXHIBIT NO. 15 - JUDICIAL MERIT  
3 SELECTION COMMISSION PERSONAL DATA  
4 QUESTIONNAIRE FOR STEVEN COLEMAN KIRVEN, DATED  
5 AUGUST 4TH, 2015, ADMITTED.]

6 CHAIRMAN CLEMMONS: Mr. Kirven, the  
7 Judicial Merit Selection Commission has  
8 thoroughly investigated your qualifications  
9 for the bench. Our inquiry has focused on the  
10 statutory nine evaluative criteria and has  
11 also included a ballot box survey, a thorough  
12 study of your application materials,  
13 verification of your compliance with state  
14 ethics laws, a search of newspaper articles in  
15 which your name appears, a study of previous  
16 screenings, and a check for economic conflicts  
17 of interest. We've received no affidavits  
18 filed in opposition to your candidacy and  
19 there are no witnesses here present to  
20 testify. Do you have a brief opening statement  
21 you'd like to share with the Commission?

22 MR. KIRVEN: Not really. I'm just glad  
23 to be here and prepared to answer any  
24 questions I may need to answer.

25 CHAIRMAN CLEMMONS: Thank you very much,

1 Mr. Kirven. With that, will you please turn  
2 your attention to your screening attorney and  
3 respond to her questions?

4 EXAMINATION

5 (By Ms. Benson)

6 **Q. Mr. Kirven, you have before you the sworn statement**  
7 **that you provided with detailed answers to over 30**  
8 **questions regarding judicial conduct, statutory**  
9 **qualifications, office administration, and**  
10 **temperament. Are there any amendments you would**  
11 **make at this time to your sworn statement?**

12 **A. No.**

13 **Q. Thank you.**

14 CHAIRMAN CLEMMONS: At this time, Mr.  
15 Chairman, I would like to ask that Mr.  
16 Kirven's sworn statement be entered as an  
17 exhibit into the hearing record.

18 CHAIRMAN CLEMMONS: Is there any  
19 objection?

20 (No response.)

21 CHAIRMAN CLEMMONS: Hearing none, so  
22 ordered.

23 [EXHIBIT NO. 16 - JUDICIAL MERIT  
24 SELECTION COMMISSION SWORN STATEMENT OF STEVEN  
25 COLEMAN KIRVEN, DATED AUGUST 4TH, 2015,

1 ADMITTED.]

2 MS. BENSON: One final procedural matter.  
3 I would note for the record that based on the  
4 testimony contained in the candidate's PDQ,  
5 which has been included in the record with the  
6 candidate's consent, Mr. Kirven meets all the  
7 statutory requirements for this position  
8 regarding age, residence, and years of  
9 practice.

10 **Q. Mr. Kirven, why do you want to serve as a Master-**  
11 **in-Equity and what of your experience do you**  
12 **believe will help you to be a good Master?**

13 A. Well, the why, I guess, is I think I've always had  
14 a desire to be a judge, like a lot of lawyers do.  
15 It was never the right time or opportunity before.  
16 This opportunity presented itself and I felt like  
17 it uniquely fits my experience and qualifications.  
18 I'm not ready to quit working, but I wouldn't mind  
19 the challenge of something different and I think  
20 this is perfect.

21 **Q. Thank you.**

22 A. As far as my experience goes, it would be helpful -  
23 - two things. Number one, I have a varied  
24 experience in the law. I've done a lot of  
25 different things. I've actually tried a number of

1 things in the Master's Court and also, for the last  
2 seven years, I've been a sole practitioner and so I  
3 have run my office from keeping the books to  
4 changing the light bulbs and I think that would  
5 help me in the administrative end.

6 **Q. Mr. Kirven, are there any areas that you would need**  
7 **to additionally prepare for to serve as a Master-**  
8 **in-Equity and how would you handle the additional**  
9 **preparation?**

10 A. I think I have a pretty good grasp of most of the  
11 substantive issues that would be coming before me,  
12 but there's always something that you haven't  
13 looked at before and that would require study, but  
14 that's probably true of any position. You know,  
15 there's been talk of utilizing the Master to do  
16 other things, including guilty pleas and General  
17 Sessions Court. Now, that's -- I think it's done  
18 in some places now, but it's never been done in  
19 Anderson and Ocone, but if that were to come to  
20 pass, then I would need some schooling, probably,  
21 in that area.

22 **Q. Mr. Kirven, what suggestions would you offer -- oh,**  
23 **excuse me. Let me go back a moment. You've**  
24 **addressed this in your materials, but what do you**  
25 **think is the appropriate demeanor for a Master-in-**

1           **Equity?**

2       A.    Well, I think a Master-in-Equity, like any judge,  
3            should be patient, courteous, dignified, but  
4            really, it starts out in my mind with respect. I  
5            think that everyone who comes into the courtroom  
6            should get respect from the judge, including the  
7            witnesses, the attorneys, the parties, and the  
8            staff.

9       **Q.    What suggestions would you offer for improving the**  
10       **backlog of cases, particularly in the Circuit**  
11       **Court?**

12      A.    Well, you know, the Master-in-Equity, I think in  
13            Judge Drew has done a pretty good job of  
14            keeping his rosters clean. As far as the backlog  
15            of other matters, again, I go back to there's been  
16            discussion about whether the Master to be utilized  
17            to hear motions in common pleas court and, perhaps,  
18            help out in the guilty plea areas and those things  
19            would be helpful in those backlogs.

20      **Q.    Mr. Kirven, currently you are a member of the**  
21       **Anderson City Council and also the Anderson Area**  
22       **Transportation Study Committee. If you were**  
23       **elected to be a Master-in-Equity, would you remain**  
24       **a member of those two entities?**

25      A.    No. I don't think that would be appropriate. I

1 would -- would have to resign from both of those.

2 Q. And you also belong to a number of organizations in  
3 Anderson which are affiliated with commerce and  
4 economic development. In any of those  
5 organizations, do you actively solicit monies and  
6 funds?

7 A. No.

8 Q. If you were to become a Master-in-Equity, would you  
9 continue to be involved with those organizations?

10 A. Most likely not. I guess I'd have to look at what,  
11 you know, on a case by case basis, but I think  
12 probably not because of the potential for some of  
13 those issues to come in before court and that sort  
14 of thing.

15 Q. Thank you, Mr. Kirven. Mr. Kirven, the Commission  
16 received 50 ballot box surveys regarding you and  
17 with three additional comments, only one of which  
18 was negative. There were several positive  
19 comments: that you are well-respected in your  
20 community and an experienced attorney and public  
21 servant. The one negative comment indicated that  
22 you are combative, unsympathetic, and not humble.  
23 How would you respond to this negative comment?

24 A. First, I would like to say I appreciate all the  
25 positive side -- the overwhelming positive side.

1 As far as the negative comment, you know, I can  
2 only assume that it probably came out of a  
3 litigation situation. Litigation, by nature, is a  
4 little bit friction oriented, but I've always taken  
5 my obligation to represent my client zealously,  
6 very seriously. I was also taught to always try to  
7 be better prepared than my opponent and to never  
8 show any lack of confidence.

9 I guess I had a few dust-ups along the way  
10 with my opposing counsel like, probably, every  
11 attorney would have, but I never felt it was a  
12 personal issue. It's sort of part of the job. At  
13 the end of the day, shake hands and go to the next  
14 day.

15 **Q. Thank you. Mr. Kirven, you've been involved in**  
16 **three lawsuits. The first matter in 1987 or '88**  
17 **where you were issued a uniform ordinance summons -**  
18 **- actually not a lawsuit, but a uniform ordinance**  
19 **summons and had to appear in Magistrate's Court.**  
20 **Could you please explain the nature and the**  
21 **disposition of that matter?**

22 **A.** As I refer to it, the great pine tree caper. It  
23 was really an unintentional thing. My wife and I  
24 decided to build a swimming pool in our backyard.  
25 We had planted some pine seedlings several years

1 before across the back of the lot and they had been  
2 grown up to be, maybe, four feet tall. The  
3 contractor was showing up on Monday, so Saturday I  
4 was working around. I said "Well, I may need to  
5 pull out these pines." And so I pulled up about 10  
6 or 12 and I had borrowed my father in law's pickup  
7 truck.

8 So instead of piling them on the street over  
9 Sunday and first of the week, I said "Well,  
10 I'll just throw them on the pickup and drop them  
11 off at the county collection place." Which is not  
12 too far out of the way in taking the pickup truck  
13 back. So I drove in to the collections site,  
14 saw an unmarked car over on the side, didn't think  
15 anything about it. I backed the truck up and off-  
16 loaded the pines. About the time, the car  
17 approached and an enforcement officer said "Well,  
18 you can't put vegetative matter in here." And I  
19 said "Well, I'm sorry. I didn't know that. Should  
20 I retrieve it?" And he said "No, I'm going to  
21 issue you a summons." And so he charged me with  
22 violation of a county ordinance about what material  
23 you could put in the landfill.

24 You know, I went to the Magistrate's office a  
25 few days later and, you know, recognized that I had

1 unintentionally violated the ordinance. I paid the  
2 fine. It was about \$50 and, you know, that was the  
3 end of it.

4 **Q. Thank you. Mr. Kirven, the second lawsuit was a**  
5 **divorce action in which you were named a defendant**  
6 **and if you could please explain the background and**  
7 **disposition of that lawsuit.**

8 A. Well, that was almost 25 years ago in 1992 and my  
9 marriage came under pressure for several reasons  
10 and a divorce action was initiated. Within a month  
11 or two, we were fully reconciled. The action was  
12 dismissed and we're still married.

13 **Q. Thank you. Mr. Kirven, the third lawsuit was filed**  
14 **in 2007 and it indicated that you were a plaintiff**  
15 **and also the plaintiff's attorney in a foreclosure**  
16 **action. This was through our SLED report. Could**  
17 **you please explain the background and disposition**  
18 **of this lawsuit?**

19 A. Yes. That was evolved from a small rental house  
20 that my two brothers and I had inherited from my  
21 mother. We really didn't want to rent it so we  
22 tried to sell it. We found a buyer and we sold it  
23 to him with 100 percent financing. We gave him  
24 the deed and took back the mortgage. And he paid  
25 pretty well for a while and then he defaulted. So

1 we had no alternative but to initiate a foreclosure  
2 action, after which he did come forward and make  
3 good on the payments and thereafter he continued to  
4 pay. Ultimately he sold the house and paid off the  
5 mortgage.

6 Q. Thank you, Mr. Kirven. Mr. Kirven, a few  
7 housekeeping issues. Have you sought or received  
8 the pledge of any legislator prior to this date?

9 A. No.

10 Q. Have you sought or have you been offered a  
11 conditional pledge of support of any legislator  
12 pending the outcome of your screening?

13 A. No.

14 Q. Have you asked any third parties to contact members  
15 of the General Assembly on your behalf?

16 A. No.

17 Q. Are you aware of anyone attempting to intervene in  
18 any part of the process on your behalf?

19 A. No.

20 Q. Have you contacted any members of this Commission?

21 A. No.

22 Q. Do you understand that you are prohibited from  
23 seeking a pledge or commitment until 48 hours after  
24 the formal release of the Commission's report?

25 A. Yes.

1 Q. Have you reviewed the Commission's guidelines on  
2 pledging?

3 A. Yes.

4 Q. As a follow-up, are you aware that the penalties  
5 for violating the pledging rules are that it would  
6 be a misdemeanor, and upon conviction, the violator  
7 must be fined not more than \$1,000 or imprisoned  
8 not more than 90 days?

9 A. Yes. That's why I've been so careful.

10 Q. Thank you, Mr. Kirven.

11 MS. BENSON: The Citizens Committee  
12 report found you to be qualified in  
13 the evaluative criteria of constitutional  
14 requirements, physical health, mental  
15 stability, and judicial temperament. The  
16 Committee found you to be well qualified in  
17 the evaluative criteria of ethical fitness,  
18 professional and academic ability, character,  
19 reputation, and experience. In it's summary,  
20 the Committee stated that it received several  
21 negative comments regarding this candidate's  
22 ability to have a judicial temperament as  
23 described in the Commission's evaluative  
24 criteria. However, the candidate presented  
25 himself favorably and was respectful and calm

1           in the face of very difficult questions.  
2           While there were no exact circumstances that  
3           those interviews cited, the number of negative  
4           responses received by the committee compelled  
5           the members to mark this candidate as  
6           qualified rather than well-qualified. Mr.  
7           Kirven, do you have a response to offer to  
8           this concern?

9    A.    First of all, I'll say I appreciate again the  
10        overwhelming positive tone of that report. I think  
11        the important thing is to put matters into context.  
12        I've already spoken earlier about the zealous  
13        representation, but I think my litigation practice  
14        was only a small part of my body of work, if you  
15        will. In addition, I've handled a lot of  
16        transactional matters and some in the multi-  
17        million dollars economy and development sale of  
18        assets and so on. Those were situations where  
19        there has to be a lot of give and take, a lot of  
20        negotiation, and a lot to get to a meeting of the  
21        minds, and then there's got to be a lot of  
22        cooperation in actually closing the transaction and  
23        putting it into effect.  
24        Outside of my law practice, I'm in a seventh term  
25        as an election official. In addition, I have

1 served on a number of boards and committees in my  
2 community. I've chaired most of them. So if you  
3 put everything in context, I think that speaks very  
4 positively toward my temperament overall.

5 **Q. Thank you, Mr. Kirven.**

6 MS. BENSON: I would just note for the  
7 record that any concerns raised during the  
8 investigation regarding this candidate  
9 were incorporated into the questioning of the  
10 candidate today. Mr. Chairman, I have no  
11 further questions. I beg your pardon. Mr.  
12 Chairman and members of the Commission, if I  
13 can ask that we can have the sworn statement  
14 of Mr. Kirven placed in the record at this  
15 time if there would be no objections?

16 CHAIRMAN CLEMMONS: Is there any  
17 objection?

18 (No response.)

19 CHAIRMAN CLEMMONS: Hearing none, so  
20 ordered.

21 MS. BENSON: Thank you.

22 CHAIRMAN CLEMMONS: Thank you, Ms.  
23 Benson. Are there any questions by any  
24 Commission members for Mr. Kirven? Yes. Dean  
25 Wilcox.

1           DEAN WILCOX: We have, generally, your  
2 outline of your career, but can you -- how  
3 many foreclosure actions have you handled in a  
4 rough sense? I mean, I'm not asking for a  
5 specific number, but over your career.

6           MR. KIRVEN: I don't know that I can give  
7 you an exact number, but I would say probably  
8 10 or 15, at least, and one as recently as  
9 this year. It was a very complex  
10 foreclosure that I think I put into my  
11 information, but I've done enough of them that  
12 I'm comfortable in that area.

13           DEAN WILCOX: And your frequency, I  
14 gather, it's somewhat irregular frequency, but  
15 at times it's quite frequent appearances in  
16 front of Masters, is that a fair reading of  
17 your statement?

18           MR. KIRVEN: Yes. I would say that its  
19 been a steady but -- well, actually,  
20 considerable, but not steady. In other words,  
21 it comes and goes as -- I mean, I have two or  
22 three things here and then I'll go for a while  
23 without anything and that's probably because  
24 of the nature of the Master's Court and it's  
25 jurisdiction.

1 DEAN WILCOX: Thank you.

2 CHAIRMAN CLEMMONS: Other questions?

3 (No response.)

4 CHAIRMAN CLEMMONS: Hearing none. Mr.  
5 Kirven we want to thank you for being with us  
6 today and offering for this position as  
7 Master-in-Equity. That concludes this portion  
8 of our screening process. As you know, the  
9 record will remain open until the report is  
10 published and you may be invited back should  
11 that need arise. We remind you of the 48-  
12 hour rule. We ask you to strictly abide by it  
13 and we would ask that you instruct any who may  
14 wish to advocate on your behalf to abide by  
15 the 48-hour rule. We thank you for offering,  
16 sir, and thank you for being with us today.

17 MR. KIRVEN: Yes, sir.

18 CHAIRMAN CLEMMONS: Okay. May we have a  
19 motion for a brief executive session?

20 MR. HITCHCOCK: So moved.

21 CHAIRMAN CLEMMONS: So moved by Mr.  
22 Hitchcock. We are in executive session and  
23 staff and security, please secure the room.

24 (Off-the-record executive session.)

25 CHAIRMAN CLEMMONS: We are back on the

1 record. Do we have a motion to find Mr.  
2 Kirven qualified and nominated?

3 SENATOR CAMPSSEN: So moved.

4 CHAIRMAN CLEMMONS: Master-in-Equity for  
5 Anderson and Oconee Counties, Tenth Circuit.  
6 We have a motion by Senator Campsen. Do we  
7 have a second?

8 DEAN WILCOX: Second.

9 CHAIRMAN CLEMMONS: By Dean Wilcox. All  
10 those in favor say aye.

11 (Commission members audibly say "aye.")

12 CHAIRMAN CLEMMONS: Are there any  
13 opposed?

14 (No response.)

15 CHAIRMAN CLEMMONS: It is by acclamation  
16 that -- I'm sorry. He's a Master-in-Equity.  
17 We would find him qualified. Senator Campsen,  
18 would you amend your motion as qualified?

19 SENATOR CAMPSSEN: Qualified.

20 CHAIRMAN CLEMMONS: Dean Wilcox, would  
21 you accept that amendment?

22 DEAN WILCOX: I agree. Yes.

23 CHAIRMAN CLEMMONS: So we are voting on  
24 finding Steven Coleman Kirven qualified as  
25 Master-in-Equity for Anderson and Oconee

1 County, Tenth Circuit. All those in favor,  
2 say aye.

3 (Commission members audibly say "aye.")

4 CHAIRMAN CLEMMONS: Those opposed?

5 (No response.)

6 CHAIRMAN CLEMMONS: The ayes have it. He  
7 is found qualified. That concludes the  
8 business for which we are assembled today. We  
9 would entertain a motion for the Chair that we  
10 will stand at ease until nine o'clock in the  
11 morning. Perhaps our next schedule that we  
12 put together, we'll try to shoot for a later  
13 start time. Questions?

14 (No response.)

15 CHAIRMAN CLEMMONS: All right. We stand  
16 at ease.

17 (There being no further questions,  
18 the proceedings adjourned at 5:00 p.m.)

19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I, LISA F. HUFFMAN, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THE SAID PROCEEDINGS, ON THE 18TH DAY OF NOVEMBER, 2015, THAT THE CANDIDATES WERE FIRST DULY SWORN AND THAT THE FOREGOING 193 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF SAID PROCEEDINGS TO THE BEST OF MY SKILL AND ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO, JUDICIAL MERIT SELECTION COMMISSION, 1101 PENDLETON STREET, COLUMBIA, SOUTH CAROLINA 29201, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 17TH DAY OF 2015.

\_\_\_\_\_

LISA F. HUFFMAN, COURT REPORTER  
MY COMMISSION EXPIRES JULY 25, 2025

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VERIFICATION OF DEPONENT

WE, JUDICIAL MERIT SELECTION COMMISSION, HAVE READ THE FOREGOING TRANSCRIPT CONSISTING OF 194 PAGES, WHICH WAS REPORTED BY LISA F. HUFFMAN, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, ON THE 18TH DAY OF NOVEMBER, 2015.

I FIND THE TRANSCRIPT OF SAID PROCEEDINGS TO BE A TRUE AND ACCURATE TRANSCRIPT ACCORDING THE TESTIMONY ON THAT DATE, WITH THE EXCEPTION OF \_\_\_\_\_ CHANGES AND/OR CORRECTIONS LISTED ON THE ATTACHED ERRATA SHEET WHICH WAS FILLED IN BY ME.

\_\_\_\_\_  
JUDICIAL MERIT SELECTION COMMISSION

\_\_\_\_\_, 2015

